THE

Parliamentary Regifter;

OR

HISTORY

OF THE

PROCEEDINGS AND DEBATES

OF THE

HOUSE OF COMMONS;

CONTAINING AN ACCOUNT OF

The moft interefting SPEECHES and MOTIONS; accurate Copies of the moft remarkable LETTERS and PAPERS; of the moft material EVIDENCE, PETITIONS, &c. laid before and offered to the HOUSE,

DURING THE

FIRST SESSION of the FIFTEENTH PARLIAMENT

OF

GREAT BRITAIN.

Begun to be holden at Weftminfter on the 31ft Day of October, 1780.

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FIRST VOLUME.

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CONTENTS



THE

HISTORY

OF THE

PROCEEDINGS AND DEBATES

Of the FIRST SESSION of the

HOUSE of LORDS,

OF THE

Fifteenth Parliament of GREAT BRITAIN.

ON the 1st of November, 1780, the King went to the House of Lords, and opened this session with a speech from the throne, which the reader will find in the Commons' Debates of this session, page 25.

Earl of Westmoreland.

As soon as the King was gone, the Earl of *Westmoreland* moved, that an humble address be presented to his Majesty. The propriety of this address his Lordship supported in the following manner. The safe delivery of the Queen, and the birth of another Prince, events which increased the happiness of the Royal Family, and also its stability, could not but be pleasing to every Member of that House, and subjects of joyful congratulation. Here he was confident there would not be a dissentient voice, he would not therefore trouble their Lordships with any recommendations of that part of the address. As to that part which expressed a sense of the happiness enjoyed under his Majesty's just and constitutional government, he observed that their Lordships could recollect more proofs of the affectionate and paternal regard ever shewn by his Majesty, since his accession to the throne, than he could. But one instance, one conspicuous proof and example of his Majesty's regard to the consti-

tution and liberties of this country, of which, young as he was, he had been a witness, and which was recent in all their memories, he could not pass by on this occasion; and that was his conduct on the occasion of the late riots; but for the interposition of him, in whose royal breast the preservation of the state is the first concern, our liberties might have been destroyed, and that constitution, on which they depend, subverted. When private houses were in flames; when the prisons were opened; when force and outrage were exercised against that and the other House of Parliament; when the Bank was attacked, and this metropolis in the most imminent hazard of being laid in ashes, then the King interposed the force, with which he had been entrusted by the former Parliament, for the salvation of this city; of our liberties, and of the state. In this, every king would not have observed his conduct---some would have seized the opportunity of turning the arms of an enraged populace against the civil constitution; and, uniting their arms with those of their military, have trampled upon the rights of the subjects. Such was the late conduct of a Northern Potentate, who had directed the fury of the people, and turned their power against the senate. His Majesty's conduct was, on the contrary, that of the father of his people, and bespoke the worthy descendant and heir of the House of Hanover. As a farther proof that the supplies granted by the last Parliament last year, had neither been misapplied nor useless, Lord Westmoreland observed, that, notwithstanding the powerful confederacy with which this nation is forced to contend, we had not in the course of this last year suffered any signal defeat; but, on the contrary, had gained several mighty advantages. A Spanish fleet, either sunk in the ocean, driven on the shore, or serving, as the greater part of it did, in the British navy! The combined fleet in the West-Indies, after all their boasted superiority of numbers, flying from our naval force, cautiously avoiding an engagement, and leaving us in the undisputed possession of the West-Indian seas. Our commerce was protected, our dominions undiminished, and Georgia and Carolina extended. In the Eastern empire of Britain, not a power to dispute our sovereignty in that quarter. Thus it appeared to his Lordship, that the conduct of government, during the year past, had not been unfortunate.

With regard to the continuance of the war for another year, the task was indeed arduous, but it was necessary. France and Spain had united their whole faculties for the sup-

port

port of the rebellion in North America, and with a view thereby to cut off our commerce, the ſource of our wealth and power. If we ſhould loſe North America, conſider the danger that muſt ariſe from the new Commonwealth, to our Weſt-India iſlands. Theſe muſt ſoon fall into other hands than ours; and our commerce with the new world thus cut off, where ſhall we find ſhipping to ſupport a navy that may ſecure to us our poſſeſſions in Aſia? Theſe two muſt, in that event, be diſſevered from the mother country, and we muſt be confined within the limits of this iſland, which would only be ours, in caſe our hoſtile and powerful neighbours ſhould not agree about dividing the ſpoil. In ſuch a difficult and dangerous juncture, it was better to preſerve, and expend the laſt ſhilling in our power, than ſubmit to conditions of peace, which muſt put ourſelves, and all that is dear to us, into the power of the enemy. Unanimity at home would yet make us reſpectable, and even ſomething beyond it, abroad. For while it muſt be confeſſed that the part we have to act is arduous indeed, there are not wanting ſeveral topics of conſolation and comfort. A firm, undivided, and compact power, has many advantages over ſuch as are compoſed of different natives, having different views, oppoſite intereſts, and liable to be detached in the courſe of time and accidents from the common cauſe. It was a maxim of Rome never to make peace but with a conquered enemy. Lewis XIV. of France, was attacked with ſucceſs by a combination of powerful and hoſtile neighbours. Many of his provinces were torn from him, and his kingdom was on the brink of ruin; yet he determined ſtill to make war, and this invincible fortitude extricated him, as is univerſally known, from all his troubles. For he found means to break the alliance, and his kingdom was ſoon reſtored to its former power and luſtre.

It is true, that the continuance of the war muſt be extremely expenſive; but Britain had carried on as expenſive wars, in cauſes of leſs importance to herſelf than the preſent. Witneſs the war of the Spaniſh ſucceſſion, and that which was undertaken in defence of the Houſe of Auſtria, and concluded at Aix-la-Chapelle. The credit of this nation is ſtill good; whereas, that of our enemies, without exception, is nothing. Spain, with all its wealth, is forced to ſtamp by power a value on paper, which coercion ſufficiently indicates its want of it. The ſhifts to which France is reduced, are of a ſimilar nature. Paper has no currency in America. Its currency cannot be enforced by the power of Congreſs;

whereas the paper credit of Great Britain flies without compulsion throughout the whole world.

As a proof of the ftraits and wants of the revolted colonifts in America, he took notice that they had for two or three years ftruggled to eftablifh their paper credit, and to negotiate loans of money that might enable them to maintain armies of their own. But thefe attempts failing, they had recourfe to an expedient which no nation ever adopted, and retained its freedom. They had taken the defperate refolution of inviting French troops into the country; a meafure which prognofticated good things to this nation. Oh! but, faid Lord Weftmoreland, fome will fay, the more the Americans are driven to the neceffity of contracting clofe alliances, and of mingling interefts and adhering to France, the more certainly they will be loft to us. We will, however, continued his Lordfhip, be of a very different opinion, when we reflect, that the more clofely they are connected, the more they are brought together and mingle their affairs, the more naturally will arife jealoufies and quarrels. With regard to the merit or demerit of the prefent adminiftration, his Lordfhip faid that that was a relative or comparative idea.

We may account adminiftration good, or tolerable, at leaft, if we know of none in whofe hands public affairs would be fafer, and who would fill their places better than they do. Men form a falfe eftimate of men in power, by tacitly comparing them, not with the men of their own day, but with other men of other periods, who have blazed like meteors in a ftorm, and been fortunate enough, by bravely daring to meet fuccefs; but who, had the ftorm they ruled continued, might have met a different fate, and confequently have been differently reprefented by fame. He here affirmed, that to conduct the prefent was an infinitely greater tafk than to manage the laft war: for in that we contended with America on our fide againft France, and now we ftruggle againft both France, America, and Spain. As to Spain having joined France in the laft war, France was at the laft gafp; and Spain, near the end of the battle, came in action merely to receive her fhare of the difgrace.

All thefe things being confidered (to which alone his Lordfhip confined himfelf, without enquiring into the rife of the American war, and the caufe of its continuance) he thought it wifer to perfevere in war, than to agree to conditions of peace dictated by our enemies, or to any truce, which would in fact be the fame thing with a defeat. He therefore moved,

that

that an humble addreſs be preſented to His Majeſty, the ſubſtance of which was, a congratulation on the ſafe delivery of the Queen, and the birth of another Prince; an approbation of His Majeſty's government, and of his intention to proſecute the war another year with firmneſs and vigour.

Lord Brownlow

Lord *Brownlow*, thought it unneceſſary to add any thing in ſupport of a motion ſo ably recommended. The Houſe would rejoice in the ſafe delivery of the Queen, and the birth of a Prince, events which would give the King ſo much ſatisfaction, and which would prove an encreaſe of that happineſs which he ſo well deſerved. He approved entirely of venturing even our laſt ſtake rather than tamely yield to the deſigns of our enemies, by cutting off our commerce, to reduce our power, and to bring us under their ſubjection. Wherefore, he ſeconded the motion that had been made by the noble Lord who ſpoke before him.

Marq. of Carmarthen.

The Marquis of *Carmarthen* roſe to ſpeak, when the Duke of Devonſhire, and one or two more Peers, coming into the Houſe, a queſtion aroſe whether they could be ſworn at any hour paſt four o'clock; there being a law of Parliament, that all Peers ſhould be ſworn in between the hours of nine and four o'clock. Lord Denbigh, Lord Sandwich, Lord Abingdon, and the Duke of Richmond ſpoke to this point of order: the two latter noblemen contending for an adjournment, and the two former againſt it, but on different principles. In the mean time the ſtanding order of the Houſe was read, whence it appeared, that all Peers ſhould be ſworn in before four o'clock.

Lord Mansfield

Lord *Mansfield* ſaid, he did not know of any ſuch order; but he had examined ſince this queſtion of order aroſe, and had found an addition in the order, permitting the Houſe, on any occaſion that might in their judgements juſtify a departure from that rule, to do it. Though the order enjoined as a rule of buſineſs to adminiſter the uſual oaths to Peers before four o'clock, it did not hinder them to do the ſame thing, when there ſhould be any neceſſity for doing ſo, after four o'clock, and they were judges of that neceſſity. There was nothing more then to do, than to put the queſtion, whether this order ſhould, in the preſent caſe, be diſpenſed with. This obſervation of Lord Mansfield ſatisfied the Houſe; the queſtion was put; the order was diſpenſed with; and the Peers were ſworn in.

Marq. of Carmarthen.

The Marquis of *Carmarthen* then roſe up again, and ſaid, that with regard to the firſt part of the addreſs he preſumed there

there would not be a diſſentient voice. Placed, as he now was, at an humble diſtance from the throne, he ſtill felt the ſincereſt ſatisfaction in every event which tended to encreaſe the felicity of the royal family. With regard to other matters contained in the propoſed addreſs, the noble Lord had entered into a wide field, and taken a very large and extenſive ſcope. If ever there was a moment, the Marquis proceeded, when unanimity was requiſite, and when it was neceſſary to lay aſide the little prejudices, which we are all conſcious, ſaid he, of feeling in ſome degree, it is the preſent: and ſince the effects of unanimity and concord are confeſſedly ſo great, if the omiſſion of a ſentence, or any thing that can eaſily be omitted, may produce unanimity, I hope that it will be omitted.

His Lordſhip then ſaid, that he approved the whole of the addreſs, until the concluſion of that paragraph which aſſured His Majeſty of the willingneſs and zeal of the Houſe to concur in any meaſures that might be neceſſary for the ſupport of His Majeſty's government, and the preſervation of their eſſential rights and intereſts; but all that part of the addreſs which countenanced and encouraged the continuance of the war, the Marquis was for rejecting; and that rejection or the leaving it out of the addreſs, he propoſed as an amendment. He adverted to the powerful confederacy formed againſt us, to the ſuſpicious intention of thoſe that were called the neutral powers; to our being in want of all allies to ſupport us under ſuch a weight, and without any proſpect of being delivered from the evils that ſurround us.

He could not ſpeak from authority, but it was in every body's mouth, and the world believed it was true, that the counſels in the cabinet were fluctuating and various. There were different factions even amongſt adminiſtration themſelves. What one miniſter or counſellor was for, another was againſt; one council was adopted to-day, another to-morrow; one day the word was, puſh the war with vigour; the next, let us try what we can do by negotiation; let us try what we can do in Europe, or in America. One plan of operations is ſent to America this month, and the next, before the former has been tried, another is ſent quite different. On the whole, his Lordſhip expected not any good from the preſent war, or the preſent conductors of it; he, therefore, concluded with moving the amendment already ſpecified.

Earl of Abingdon

The Earl of Abingdon was againſt both the addreſs and the amendment. Amendments were generally good for nothing;

they

they only ferved to make the addrefs the more palatable. He would fpeak his mind freely. The addition of another Prince to the royal family was no matter of joy to him, fince there was no provifion that he knew of for fo numerous a royal progeny. Thirteen colonies were loft, which would have been a provifion for thirteen children. He was for throwing out the addrefs altogether. The affociations were going forward; a new order of affairs would fucceed, which would render fuch minutiæ as addreffes quite needlefs. He wifhed the people might obtain a new magna charta. It was in the reign of the good King John that the old one was obtained. He wifhed for a new declaration of the rights of the people. The prefent fyftem of government, he faid, was arbitrary. There was a fyftem of defpotifm going on; for defpotifm, or arbitrary government, confifted in governing by will, not by law. The whole grievances of the people flowed from their not making a diftinction between legiflative and executive power, both of which powers they confound together, and call fupreme; but the legiflative power only is fupreme. And why is it fupreme? Becaufe all laws are founded in nature; all laws that we are bound to obey; but laws that are arbitrary are enforced by violence, by art, which are the contrary of nature. If it be true that laws founded in nature are to be *propofitiones contrariæ non poffunt fimul effe veræ*.

On a divifion of the Houfe, the addrefs was carried, contents, 68; not contents, 23

Earl of Aylefbury

The Earl of *Aylefbury* moved, that an humble addrefs be prefented by the Houfe to the Queen, congratulating her Majefty on her happy delivery, and on the birth of a Prince.

Lord Southampton.

Lord *Southampton* faid, that though he had fcarcely paffed the threfhold of the Houfe, he could not refrain from feconding a motion, which would give him an opportunity of carrying fo joyful a meffage to the royal ears. This motion was agreed to unanimoufly.

November 2.

The Addrefs prefented.

The humble Addrefs of the Right Honourable the Lords Spiritual and Temporal, in Parliament affembled.

Die Mercurii, 1 *Novembris*, 1780.

Moft gracious Sovereign,

WE, your Majefty's moft dutiful and loyal fubjects, the Lords Spiritual and Temporal, in Parliament affembled, beg leave

leave to return your Majesty our humble thanks for your most gracious speech from the throne.

Permit us to offer to your Majesty our most dutiful congratulations on the birth of another Prince, and the happy recovery of the Queen, and to assure your Majesty, that every addition to your Majesty's domestic happiness must always afford the highest satisfaction to your faithful subjects.

In the present arduous situation of public affairs, we think it an indispensable part of our duty to make those spirited and vigorous exertions which such a conjuncture demands; and we beg leave to assure your Majesty, that we are united in a firm resolution to decline no difficulty or hazard in the defence of our country, and for the preservation of our essential interests.

It is with just and heartfelt indignation that we see the monarchies of France and Spain leagued in confederacy to support the rebellion in your Majesty's colonies in North America, and employing the whole force of those kingdoms in the prosecution of a war waged in violation of all public faith, and for the sole purpose of gratifying boundless ambition, by destroying the commerce, and giving a fatal blow to the power of Great Britain.

We have seen with great satisfaction that the force which, with just confidence, was entrusted to your Majesty by Parliament, has, by the blessing of Divine Providence on the bravery of your fleets and armies, enabled your Majesty to withstand the formidable attempts of your enemies, and to frustrate the great expectations they had conceived; and we hope and trust that the success of your Mojesty's arms in Georgia and Carolina, gained with so much honour to the conduct and courage of your Majesty's officers, and to the valour and intrepidity of your troops, will have the most important consequences, and that such signal events, followed by those vigorous measures which your Majesty recommends, and in which we are determined to concur, will disappoint all the views of our enemies, and restore the blessings of a safe and honourable peace.

We are satisfied that the only way to accomplish this great end, which your Majesty so earnestly desires, is to make such powerful and respectable preparations as shall convince our enemies that we will not submit to receive the law from any powers whatever, but, with that spirit and resolution which becomes us, will maintain the essential rights, honour, and dignity of Great Britain.

We

We have a deep and most grateful sense of the constant solicitude your Majesty shews to promote the true interests and happiness of all your subjects, and to preserve inviolate our excellent constitution in church and state. And we beg leave humbly to assure your Majesty, that it shall be our earnest endeavour to justify and deserve the confidence which your Majesty so graciously places in our affection, duty, and zeal.

Ordered that the said address be presented to his Majesty by the whole House.

His MAJESTY's Answer.

My Lords,

I THANK you heartily for this very loyal and dutiful address.

The joy you express in the increase of my family, and in the happy recovery of the Queen, is extremely agreeable to me.

Your wise and spirited resolutions to prosecute the war with vigour, and to maintain, at every hazard, the essential interests, dignity, and honour of Great Britain, give me the highest satisfaction, and must be productive of the most salutary effects, both at home and abroad.

November 3.

Lord Chancellor.

The *Lord Chancellor* rose and said, a rumour had reached his ears of an insult having been offered, and a farther insult threatened to one of their Lordships; that the whole of the report was so uniformly consonant, that although it was impossible for the House to take up the matter in its present stage, or for him to suggest to their Lordships what would be the proceedings which might possibly be necessary, when the whole fact, and all its relative circumstances, were formally and correctly before the House, yet he had thought it peculiarly incumbent on him to rise, not to inform, but to remind, their Lordships, that such a rumour had prevailed, and to state to their Lordships, with all due submission, that it was their duty to take some step in relation to the rumour, which to their wisdom should seem most likely to rescue the House from so great an indignity as it would unavoidably sustain, if an insult was permitted to be offered to the person of any one Peer. He had only to add, that if, by accident, any of the noble Lords present were perfectly in possession of certain facts stated in the rumour, or of any letters tending to shew what those facts were, it would be an act of duty, on their parts, and of obligation to the House, to communicate the same to their Lordships.

Earl of Jersey.

Earl of *Jersey* rose, and said, a correspondence tending to the

the most serious consequences had taken place between two noble Peers of that House, which unless immediate steps were taken, might be fatal to one or both of the parties. His Lordship was then called upon for their names; he replied, "the Duke of Grafton and Lord Pomfret;" and his Lordship moved, that those two Peers be summoned to attend in their places on some future day.

Lord Chancellor. The *Lord Chancellor* rose again, and acquainted the House, that he believed the first step to be taken, and the most agreeable to order, was to direct the two right honourable members to attend in their places on a certain day.

The Lord Chancellor then put the motion,

That his Grace the Duke of Grafton and the Earl of Pomfret do attend this House in their places next Monday, the 6th.

November 6.

The order of Friday, for the attendance of the Duke of Grafton and Lord Pomfret was read.

Lord Chancellor. The *Lord Chancellor* then observed, that a noble Earl (Jersey) had stated in his place on Friday, though previous to such notice there were strong and probable rumours to the same purport, that a noble Duke and a noble Earl, members of that House, had had a correspondence which, from its complexion and tendency, was likely to be productive of very fatal consequences. Upon this information the order now read was made by the House, and as he perceived that in compliance with that order both the Lords were in their places, he meant the Duke of Grafton and the Earl of Pomfret; and as it was impossible for the House to proceed farther in the business without being informed of the circumstances alluded to, it was expected that the noble Lords, or either of them, would state to the House, as members, how far they were respectively concerned.

Duke of Grafton. The Duke of *Grafton* then rose, and begged leave to inform their Lordships, that he was there in his place in consequence of their Lordships' order; that he thought it his duty to obey the orders of the House at all times, and upon all occasions, for which reason, with the permission of the House, he should proceed to give a faithful account of what passed, as far as came within his knowledge. He should avoid detail as much as possible, and omit every circumstance which was not supported by facts.

He should just observe, that the noble Earl near him and he had never any disagreement whatever, that he always entertained

tertained an high respect and esteem for his Lordship; and that of course, what had recently happened seemed to him the more unaccountable.

To his utter astonishment, on Sunday fortnight, the 22d ult. early in the morning, at his seat of Euston Hall in Suffolk, he received the following letter, which he begged to be indulged so far as that the clerk might read it. He said, it was a letter signed Pomfret; and it having been offered, Lord Pomfret acknowledged it to be his hand-writing. He said the letter was delivered to him as coming from the noble Earl, who, he understood from the bearer, was waiting for an answer at the inn at the Park Gate.

The letter was then handed to the clerk, and read by him. It imported, that his Lordship was waiting for him with a case of pistols and a sword, and demanded satisfaction; the cause of which demand was, that the noble Duke to whom the letter was directed, had provided for and protected a servant of his, one Langstaff, lately discharged; and concluded with positively demanding immediate satisfaction.

His Grace, as soon as the letter was read, professed he never was so astonished in his life. He had never till that instant so much as heard of Langstaff's name, and had continued always to live upon the most friendly terms with the noble Earl, from their earliest acquaintance; and he could affirm, as the great God was his judge, he neither directly nor indirectly had any hand in providing for Langstaff.

Surprised at the extraordinary tenor of the letter, but conscious of his own innocence, he immediately wrote the noble Lord an answer. The answer was read, and was to the following purport: That he knew nothing whatever of the supposed ground of offence; professed his high esteem for his Lordship; begged that the noble Earl would either on receipt come to Euston, or when a friend of his, who was then at church, should return, he would send him to wait on the noble Lord to explain the matter to him, and convince him that there was not the most distant colour for the displeasure he had conceived against him.

In what he had done hitherto his Grace said he had consulted no one, but as soon as his friend returned, he imparted the whole matter to him, and they both went to the inn to enquire for the noble Lord; but when they came there, could get no account of any such person. He had himself perceived a chaise at a distance, and went to the place where he had seen it, and inquiring at a cottage near which the chaise stood,

was informed that as soon as the servant went back to the chaise, orders were given to the driver to turn the horses the other way, and it instantly drove off

In the evening of the same day he received a letter dated from Barton Mills, five o'clock, which was likewise handed to, and read by the clerk. This letter, after passing some handsome compliments on the noble Duke's public conduct, and professing himself perfectly satisfied with his Grace's conduct, proceeded to state the grounds of his suspicion, and of course his motives for writing the letter delivered in the morning. It observed that Langstaff had been his game-keeper, and that he had discharged him; that Langstaff vowed vengeance on his being dismissed from his service; that he had lately caused him to be apprehended, and brought before two magistrates on suspicion, and that one Smyth, his Grace's huntsman, had interested himself in Langstaff's behalf before the magistrates, saying that Langstaff was under his Grace's protection, who had lately provided for him in the excise; and that in consequence of his Grace's name, and the influence annexed to it, Langstaff had been set at liberty His causes of complaint against Langstaff were then stated; and he concluded his letter by testifying his perfect satisfaction, provided the noble Duke would insist that Smyth should disavow having any authority from his Grace for making use of his name.

This letter being read, his Grace said, by the time it reached him, his huntsman had come from Whittlebury forest, in Northamptonshire, and informed him, that Mr Smyth was to set off on Monday, the next day, with the dogs and hunters for Euston. This being a distance of ninety miles, he concluded, that Mr. Smyth would not reach Euston till Wednesday evening; he did not therefore lose a minute's time, but instantly wrote a note, and dispatched a servant with it to Barton-Mills, where, he presumed, the noble Earl might have rested for the evening, desiring the servant however to bring back the note if he should not find Lord Pomfret there. The servant accordingly did so, and learnt, that the horses which drew the carriage were Barton-Mills horses, but that the noble Lord had gone back to the last post. In this note he stated the circumstance of his expecting Mr. Smyth at Euston the ensuing Wednesday, and of his taking the earliest opportunity, after Mr. Smyth's arrival, of causing him to write a letter to the noble Earl, containing a true state of the transaction, and of course informing his Lordship that he

he knew nothing at all of Langſtaff, and if any one had made uſe of his name in the affair, it was totally without any authority from him.

So the matter reſted. His Grace ſaid, that on this note being returned to him by the ſervant he ſent with it to Barton-Mills, he tranſmitted it; by the general poſt, to his Lordſhip, at Euſton, near Northampton.

On the arrival of Mr. Smyth at Euſton, he imparted to him what had paſſed, and Mr. Smyth immediately wrote to his Lordſhip, denying every thing reſpecting Langſtaff, of which his Lordſhip had been informed, ſo far as the ſame reſpected his Grace.

He remained at Euſton till Wedneſday laſt, and arrived in town on Friday, when, about five o'clock in the afternoon, he received a third letter from the noble Earl.

This letter was likewiſe read by the Clerk, and after declaring that his reſentments had returned, charged his Grace, in the fouleſt and moſt unbecoming language, with cowardice; gave no credit to his repeated aſſertions; and accuſed him with acting baſely, and, if our memory ſerves us right, with being a f——l.

After the ſeveral letters were read, his Grace expreſſed himſelf in very moderate terms, and with a candour and generoſity that did him great honour.

As ſoon as his Grace ſat down, the Earl of *Pomfret* roſe. His Lordſhip oppoſed ſtrongly the reading of the laſt letter, but was called three or four times to order by the Chancellor. His general defence, though conſiſting of a great variety of particulars, may be thus ſhortly compriſed:——That he had a game keeper, one Langſtaff, who being diſappointed of being made his ſteward, conceived the worſt intentions againſt himſelf, family, and houſe, denouncing deſtruction againſt them all: that before he quitted his ſervice, he endeavoured to carry ſome of his threats into execution, particularly againſt one of his ſons, whom he endeavoured to allure to the ſtables, and knock on the head with ſome deadly weapon, under pretence that the horſe or horſes had kicked him. That before he left his ſervice, he had frequently and loudly denounced thoſe threats: that he had a fine colt ripped open, and his entrails let out, by this man: that he had him apprehended, upon ſuſpicion of the felony, and let him go, on condition that he would keep out of Towceſter and its neighbourhood: that he was induced to take this ſtep, merely on the account of the ſafety of his own perſon, his wife, and chil-

Earl of Pomfret.

dren, all of whom, he feared, would fall by the hands of this assassin, and his house and furniture be destroyed by fire.

That, for the benefit of the air, he and his family removed to a place near town, for which he was indebted to his Majesty's goodness, where he remained till he returned to his seat in Northamptonshire on the 12th of October, where he confessed he was equally filled with alarm and indignation, on being informed that Langstaff was returned in the capacity of an assistant to the officer of excise for the district of Towcester. His fears and apprehensions again returned for his wife, children, and property, and they soon appeared to be well founded, for he had a fine colt lamed by the malicious means employed by Langstaff, who prevailed on the farrier, who shod him, to drive two nails up the quick or frog of two of his feet, so as to render him quite useless.

On this ground he had the villain taken up on suspicion, and brought before two justices, but through the interference of Smyth, the noble Duke's huntsman, who made use of the noble Duke's name, the fellow was let to go at large. Under such a distress of mind, in continual fear for his wife and children, for himself and his property, and finding no redress nor prospect of redress, so long as the fellow continued to be thus so powerfully supported, he was led to take the steps he did, and though now he was ready to give his honour to take no further notice of what had happened, so far as the same respected the noble Duke, he looked upon it that he had no right to pay any great degree of credit to what had passed, nor could he say but he had strong motives of resentment, which had only been suspended, not subsided, when, instead of a satisfactory declaration from the noble Duke, he referred him to a written explanation to be given by his huntsman. He received the letter alluded to by the noble Duke from Smyth, which he would read; but taking all the circumstances, and considering them together, he had no right to be pleased, and he was now enabled to see to the bottom of the whole, and see clearly where the matter originated. Smyth was his Grace's huntsman, and in his intimacy he procured the place for Langstaff, and rode about the country with him, giving him his countenance, and reporting that he was protected by the noble Duke. Mr. Stonehewer was the person who procured him the place, and the matter was every way clear in itself.

His Lordship here read Mr. Smyth's explanatory letter, dated Euston, in part, and after he had proceeded, handed it

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to the clerk, observing, that it was such an heap of nonsense and ignorance that he could not bear to read it.

The letter stated that several persons in the neighbourhood had applied to him, Smyth, to endeavour to procure for Langstaff a place in the excise; that in consequence of this application he recommended him to Mr. Stonehewer, one of the commissioners of excise, who sent down an order to have him instructed preparatory to his appointment; in consequence of which the excise officer of Towcester, it being the next place to his residence, had orders to instruct him; that as to the apprehensions of Langstaff's remaining there, they were totally unfounded, for having wrote to the supervisor of excise, he assured him that it was a rule never to appoint a man to a district where he was instructed, nor in the county where he was born; and as to what passed before the justices on the apprehension of Langstaff, he was discharged merely because an affidavit was made by a person that the night his Lordship's colt was so cruelly treated, Langstaff slept in his house.

This letter being read, his Lordship reiterated several of his former arguments, pleaded his well-founded apprehensions of the diabolical intentions of Langstaff against his family, spoke much of his weakness, and the means that had been made use of to prejudice the public against him, and submitted to their Lordships, whether, under such a load of obloquy, oppression, provocation, and ill-treatment, he had not great cause of resentment. His Lordship by no means seemed to be reconciled, at least with Mr. Smyth and some others; and though he seemed willing to decline persisting in his former resentments against the noble Duke, he was far from acknowledging the steps he had taken against his Grace had no just foundation.

Lord Chancellor.

As soon as his Lordship sat down, the Lord *Chancellor* suggested the propriety of having one or both the noble Lords withdraw, according as the House might think proper to determine. The only leading precedent on the journals, both the noble Lords withdrew, previous to the consideration of the business; but that precedent was not exactly in point, as the noble Lords ordered to withdraw were both culpable, whereas on the present occasion no complaint, either direct or implied, was imputed to the noble Duke. He wished, however, for the direction of the House.

A pause ensued, and his Lordship observed, as nothing specific was said, he was to presume it was the sense of the House that both Lords should withdraw. He then moved it, and it was ordered. ——— Another

Another queſtion aroſe, whether they ſhould withdraw into ſeparate rooms.

After a ſhort interruption, Lord Pomfret wiſhed that they might withdraw into the ſame room. He pledged his honour, if their Lordſhips did permit it, nothing ſhould happen in conſequence of it.

It was at length agreed that their Lordſhips ſhould retire into ſeparate rooms.

Lord Camden. As ſoon as the noble Lords withdrew, Lord *Camden* roſe, and ſaid he ſhould juſt throw out a few hints to the Houſe for their Lordſhips' conſideration; and if what he might offer ſhould meet the ſenſe of the Houſe, or the Houſe ſhould go along with him, he would move a queſtion on it, otherwiſe he meant not to offer any thing as independently coming from himſelf.

The firſt object as a general one to be conſidered was, whether the noble Earl who had ſent the challenge (for as to criminality in the noble Duke it was totally out of the queſtion) ſhould be conſidered as a criminal; and if ſo, what kind of puniſhment he was liable to undergo? If his Lordſhip ſhould be deemed a criminal, it would be neceſſary to have recourſe to precedents. The only precedents which recurred to his memory, were thoſe of Lords Middleſex and Bridgewater in the reign of Charles the Second; and of Lords Granville and Keith in the reign of King William. Here his Lordſhip gave a narrative of the whole proceedings in reſpect of the former, and moved that the Journal might be read, which was done accordingly.*

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* A nobleman having enticed away, with a purpoſe of marrying, a daughter of the Earl of Bridgewater, that nobleman wrote a letter to Sir Chicheſter Wrey, containing ſome ſuſpicions that the Earl of Middleſex was privy to his daughter's elopement, or was aſſiſting in it, upon which Lord Middleſex ſent Lord Bridgewater a challenge. This circumſtance coming to the King's knowledge, he interpoſed, and endeavoured to reconcile them. This interpoſition not having the deſired effect, his Majeſty propoſed to their Lordſhips, that four noble Lords, two on each ſide, ſhould be acquainted with the circumſtances; and that they ſhould abide by what the Lords (arbitrators) agreed. A report was made, but Lord Middleſex refuſed to acquieſce. Two more Lords were added on each ſide, but they were equally unſucceſsful in obtaining the deſired object, freſh obſtacles having been thrown in the way by Lord Middleſex.

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The first entry on the Journal was the 8th of June, 1663, the 15th of Charles II. when, upon a letter wrote by Lord Bridgewater to Sir Chichester Wrey, it appeared that Lord Middlesex sent Lord Bridgewater a challenge, of which the latter accepted; that the King took the business upon himself, and appointed first two, and then four, noble Lords on each side to settle the matter, but the parties were implacable, and refused to abide by their determination; that afterwards he referred it to a commission in the office of the Earl Marshal, whose determination met with the fate of that made by the Lords Arbitrators; and finally, that the King sent a special message by the Lord Privy Seal to that House, to take up the matter itself. Each day's proceedings in the House were read; and after the matter undergoing several discussions, namely, on the 8th, 12th, and 25th of June, and 2d of July, in the early stages of which the Earl of Middlesex was sent

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The King, however, to leave no means untried, issued an order to constitute a Commission in the office of the Earl Marshal of England, as a court of honour, entitled to have cognizance of such matters. The court, in compliance with his Majesty's orders, proceeded to enquire, and heard proofs; but there being no obligation on the parties to obey the determination come to in the committee thus constituted, both the noble Lords declined to abide by it.

This incensed his Majesty greatly, who sent a message by the Lord Privy Seal to the House, desiring that their Lordships might interpose their authority, expressing at the same time how much he was displeased with the conduct of the two noble Lords.

We should have taken notice, that during these several proceedings, Lords Middlesex and Bridgewater were in custody; for as soon as the King had the first intimation of the quarrel, he gave directions that their Lordships should be put under arrest, where they still remained.

When the Privy Seal therefore delivered the message relative to the business, the House immediately ordered that the noble Lords should be taken into the custody of the Gentleman Usher of the Black Rod. This being complied with, the House proceeded to take the matter into consideration; and after long debate, a motion was made, and question put, which was resolved in the affirmative, that Lords Middlesex and Bridgewater, the one for sending, and the other for receiving, a challenge, had acted highly in contempt of the respect due to that House. After which another motion was made, that for their said contempt the Earl of Middlesex be committed to the Tower, and the said Earl of Bridgewater to the custody of the Black Rod.—The two noble Lords were called to the bar, and informed by the Speaker of the order of the House.

sent to the Tower, and Lord Bridgewater committed to the custody of Black Rod; the event of the whole was, that they were both ordered to come to the bar, and make satisfaction to the House, and be there reprehended by the Speaker; and after they came to their respective places, to rise and be reconciled, the offender, or challenger, confessing his offence, and asking pardon of the other noble Lord.

The other precedents of Lords Granville and Keith were likewise read, with all their circumstances, as stated in the Journals of the year 1690.

Lord Camden.

This being finished, Lord *Camden* rose again, and wished, as he said, to feel the sense of the House respecting what it might be proper to do; but here a silence of several minutes ensued, upon which he said he must decline going further,

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A committee was appointed to consider of the proper mode of proceeding, who, on the 11th of June, reported, by the mouth of their chairman, Lord Ashley, afterwards Earl of Shaftsbury, which report underwent several alterations. A motion was made, that said report, thus altered, be now received, which, after long debate, passed in the negative.

On the 25th the report was taken off the table, and the mode of future proceeding discussed. The business was further adjourned to the 27th, when the following mode of conducting the business was finally determined upon.

That on a certain day (July the 2d) the two noble Lords should come to the bar, and on their knees crave pardon of his Majesty and the House, whose government and dignity they had insulted. After which the Speaker was to reprehend them severally for the high offence they had committed.

After this they were to be admitted into the House, and after they came to their places, they were again to apologize to the House, and the Lord who sent the challenge, to ask the noble Lord's pardon to whom he sent it, and both the noble Lords to be reconciled.

On the 2d of July, 1663, those formalities, which had been previously settled, were complied with, and here the affair ended.

The difference between Lord Granville and Lord Keith was not so minutely attended to. A challenge passed between the noble Lords, in which Colonel Granville, afterwards the celebrated Lord Lansdown, was to be second to Lord Granville, and Colonel Trig to Lord Keith. Notice was given to the House, and the two Lords ordered to attend in their places. Lord Granville paid obedience to the order; but Lord Keith refused, till at length an order was given to break doors.

The two Lords were then brought to the bar, reprimanded, and afterwards reconciled in the House.

unless he should previously understand it to be the sense of the House.

. . Another pause ensued; at length the *Chancellor* rose, and made a very able speech; stated the precedents, and said their Lordships had a choice to adopt one or the other, or to strike out a new one. The tenor of his speech rather tended to a recommendation of some exemplary proceeding.

Lord Chancellor.

The Marquis of *Rockingham* said a few words; the case was a new one; that neither of the precedents exactly came up to it; and threw out some hints of insanity, and the danger of permitting the noble Earl, in his present state of mind, from going at large.

Marq. of Rockingham.

Lord *Camden*, when he rose the second time, said, that the noble Earl, though he had given his word of honour not to take any farther step, did not appear to be convinced that he had acted without provocation.

Lord Camden.

The Marquis of *Carmarthen* pointed out the necessity of the House declaring the act committed by the noble Lord to have been criminal, and consequently deserving of punishment; he therefore moved that the noble Lord acted in contempt of that House.

Marq. of Carmarthen.

This being agreed to, he moved next that the noble Lord be committed to the Tower, which was agreed to.

Agreeably to precedent, Lord Pomfret was ordered to the bar, and informed by the Lord Chancellor that it was their Lordships' pleasure that he be committed to the Tower.

As soon as Lord Pomfret retired, in custody of Black Rod, the Marquis of *Carmarthen* moved, that the Duke of Grafton had acted with respect to the House, and perfectly conformable to the principles of a man of honour; which was agreed to.

Marq. of Carmarthen.

A warrant of commitment was then made in the name of the House, and signed by the Chancellor, directed to the Lieutenant of the Tower of London, to receive and keep in custody the body of the Earl of Pomfret, till delivered by due course of law.

No business till

November 15.

The Earl of Pomfret having presented a petition, the order of the day was read for taking the same into consideration. The petition was read.

"The humble petition of the right honourable George Fermor, Earl of Pomfret,

"Humbly sheweth,

"That your petitioner hath, ever since he fell into the displeasure of this honourable House been highly afflicted, that he should upon any account whatsoever deserve to be separated from that House, of which he hath the honour to be a Member.

"That your petitioner doth in all humility acknowledge his offences, and your justice in all that you have ordered concerning him.

"May it therefore please your Lordships to take into your most honourable considerations, the deep sense your petitioner hath, that he hath justly deserved the displeasure of your Lordships, and doth most humbly implore the grace and favour of this honourable House, in pardoning his offences, and restoring him to their good opinion, and the effects of it.

And your petitioner, &c.

POMFRET."

Lord Osborne.

Lord *Osborne*, Marquis of Carmarthen, then rose up, and acquainted their Lordships, that the House were in possession of all the facts relative to the melancholy event respecting the noble Earl, and of his commitment.

That he had searched the Journals for precedents, in order to inform himself what steps were proper for the House next to take in consequence of so high a contempt, and therefore with submission he should first move,

1st, That the right honourable George Fermor, Earl of Pomfret, do have the reprehension of this House, for his offence committed against this House, given at the bar standing.

2dly, That the Earl of Pomfret do make his humble submission to this House standing in his place.

3dly, That the Earl of Pomfret do engage upon his honour not to prosecute farther any measures of violence or resentment against any persons who may have been the objects thereof.

These several questions were put to the House by the Lord Chancellor, and agreed to *nem. diss.*

November 16.

Marq. of Carmarthen.

The Marquis of *Carmarthen*, as chairman of the committee of privileges, to whom the consideration of the Earl of Pomfret's petition was referred, rose and read the report of said committee. It was afterwards read by the clerk at the table, and agreed to without any amendment by the House.

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It was in substance as follows: that the Earl of Pomfret be brought up to the bar, as the next day, in the custody of the Lieutenant of the Tower; that, standing at the bar, he be acquainted with the proceedings had in his Lordship's absence, and be reprimanded, in terms expressive of the sense the House conceive of the breach of privilege he had been guilty of, and the high insult given to the dignity of that House by his Lordship, in sending letters to his Grace the Duke of Grafton, containing a challenge to fight, and couched in terms of abuse and personal reproach, unfit to be sent to any right honourable member of that House. To likewise acquaint the noble Earl, that their Lordships had remitted the punishment, justly due to so high an offence, aggravated as it was by all the circumstances which accompanied it on account of the humble petition presented to the House by his Lordship, containing an acknowledgement of his said offence, and expressing a sorrow for his having done any thing which could have brought upon him the displeasure of their Lordships. The report further stated, that it would be expected, that the noble Earl should acknowledge, that the resentments conceived by him against the noble Duke, had been founded in the mistaken apprehension of an affront, which he was convinced the noble Duke did not offer; and finally declare, upon his honour, that all his former resentments and suspicions were at an end; and that they should cease, as well in respect of the noble Duke against whom they appeared to be chiefly directed, as the several other persons who had been objects of them.

Duke of Bolton.

The other order of the day was then read for the House to be summoned, on a motion of the Duke of *Bolton*, on which his Grace rose, and entered into a kind of abstract state of the nation. His Grace observed, that in this critical and very unusual situation of the country, when the landed interest was oppressed byond all example, from the nation's being engaged in a war of so ruinous and expensive a nature, that although every year's continuance of that war inevitably added to the enormous burthen of our public debt, including the money spent, whether raised within the year, or borrowed at an exorbitant interest, at the rate of nearly twenty millions per annum, to compare what was perfomed in return this wasteful profusion of treasure; to oppose the advantages to the disadvantages, and by striking a balance, learn whether the nation had been a loser or gainer. This, he believed. could not be so well decided upon in any other way,

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as by having reference to the event of the last year, he would not say disgraceful, but most certainly inactive and inglorious, campaign, there was no prospect of a fortunate issue of that war, nor indeed of any issue. It would not perhaps be thought presumptuous for an individual, insignificant as he was, to call their Lordships' attention to the present most alarming state of affairs in general. The language of the times was, his Grace said, like the times themselves, altogethe extraordinary and new. In former wars, when this country was ever so hard pressed by her enemies, the speeches from the throne, and the speeches of ministers, held out to the people *something of comfort, some hopes* of a better turn of fortune. At present neither the speeches of His Majesty, nor the speeches of his servants, afforded any thing that amounted to express a satisfactory feeling, as to our future prospects—on the contrary, all was dismay, and nothing was heard from any quarter but the tremendousness of the confederacy against us, and the great power and mighty preparations of the family alliance, the alliance of the House of Bourbon! Of the alliance he had at different times heard very different language. The late Earl of Chatham, he remembered, used to warn the House of that alliance. Others had said, it was an alliance to be laughed at. Without adopting either opinion, he begged leave to ask what had ministers to shew, or what argument could they urge to prove, that their country was in a better state now, than it had been in the last year? He knew not where to turn his eyes in order to find that our situation was improved. In America, what had we done? lost Rhode Island, the only good winter harbour on that side the Atlantic, which was now by well-planned additional works rendered so strong, as to render any attack or expectation of recovering it totally improbable, and too absurd to be entertained even in idea; which, while it answered the double purposes of keeping Sir Henry Clinton in check, and thereby straitening him in his quarters, rendered the communications between New-York and Europe, to the southward and the West-Indies, totally insecure and hazardous, at the best very precarious. But what had our army done? lost a good man, and sent a gallant officer to be hanged, and in return received a very bad man in exchange, whose services or fidelity could not with safety be relied on. Ministers had boasted, in their speech from the throne, of the victorious feats of Lord Cornwallis, and of our success in Georgia and the Carolinas—he saw no such great cause for exultation on that account, though

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our officers had undoubtedly behaved well. He was convinced, that the state of New York, and its vicinities, hemmed in on all sides, as the commander in chief was, more than counterbalanced any advantages obtained in the Carolinas. In the West-Indies, our situation was surely much worse than it had been last year. By sending Admiral Rodney to touch at Gibraltar with his four ships instead of sending him directly to the West-Indies, a good opportunity had been lost, and the French had time given them to put their islands into a better condition than they were in the last year; though during the greater part of the last campaign we were masters of the West-Indian seas, yet nothing had been effected. In Europe we had but one ally, and by our own mismanagement we had contrived to lose that ally. He alluded to Portugal, and meant to describe her as the only ally that had shewn any desire to serve us; and how had we lost her? by most unwarrantably presuming to make the port of Lisbon a neutral port, a station and a place for fitting out ships; nay, a kind of naval arsenal, a matter unheard of before, and contrary to the law of nations! By such conduct it was, that we had now no port in Europe but England, and were confined to our island. At the same time we had added to the neutral powers in confederacy, and by that means strengthened the hands of our enemies, for certainly the neutral powers having armed in confederacy was an advantage on the side of our enemies, and a great disadvantage on our side; as we had thereby, in a great degree, been deprived, and, he feared, if the armed neutrality should be finally agreed upon, totally deprived ourselves of all the natural and acquired advantages hitherto derived from our situation between the northern and southern powers of Europe, and our acknowledged dominion in the narrow seas: because all the supplies, at least much the greater part, necessary to the fitting out and maintaining the French and Spanish navy, would be obliged to pass eight months of the year through our channel; but if the objects of the armed neutrality should be obtained, neither our natural situation nor ancient claims would or could avail; for, he presumed, the noble Earl at the head of the Admiralty was not prepared to say, that he was ready to wage war with all Europe. His Grace begged their Lordships to consider these things, and to look also at the ruined trade of the country. There it was he meant to lay his finger, and on that he should hinge the proposal he designed to offer to their

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Lordships, for the reception and consideration of which, he had taken the liberty to move that they might be summoned. The trade of Great Britain had suffered beyond all history in the course of the last summer. On the 9th of August no less than fifty-two ships captured at once, and among them five East Indiamen, and many richly laden for the West Indies! Let their Lordships consider the importance of that loss—let them recollect, that it might cost this country twenty millions of money; because, from the nature of the stores, the usefulness of the articles with which that fleet was freighted, and the great value of the whole capture, France and Spain might be enabled to continue the war another year, and God knew how much longer. That fleet had, contrary to wisdom, contrary to every necessary caution, been suffered to touch at Madeira, when it was well known that the combined fleets of the House of Bourbon were stationed at Cadiz, and waiting to make the best of any opportunity that might offer of enriching themselves at our expence. This circumstance it was that he meant particularly to call their Lordships' attention to, and to institute an enquiry, that the House might know to whom it was imputable, that this fleet sailed under so slight a convoy, and who it was that directed the Commodore to come in so close with Cape St. Vincent; and why, at a period of such imminent danger, that fleet sailed in the track for Madeira, or if it was indispensibly necessary that the fleet should touch at Madeira, why it was not convoyed across by the western squadron all the latitudes till it passed Cape St. Vincent? It therefore appeared to him, on the whole consideration of the state of naval operations, as well offensive as defensive, as well to protect our own property, as to annoy our enemies, that our grand fleet, then in the bay, under the command of Admiral Geary, could not have rendered any service to its country, so great or acceptable, as that of convoying our fleet out of the probable track of a formidable enemy, from whom, in the extent of the ocean they were spread over, it was impossible to escape, under the presumed directions the commodore acted; for most clearly, if Captain Moutray did not act under specific instructions, respecting the course marked out for him, he had been much to blame.—He believed that Captain Moutray had acted under specific instructions, and that was the principal object of his present motion.—His Grace observed, that it had been customary, in the case of public disasters, such as he had been alluding to, to propose enquiries into the causes which operated

ed, in producing a calamity of this alarming, extensive, and he feared fatal, nature, and thereby learn, whether any blame was due to those who had *given*, or *executed* the orders, concerning the same.—He trusted the House *felt* the propriety, justice, and necessity of instituting such an enquiry.——He was himself perfectly persuaded of it, and under that persuasion, begged leave to submit to their Lordships, the following motion, and that merely, as blame was imputable somewhere, that their Lordships and the nation might know who it was, or was not, that ought to stand responsible to Parliament and people, for the loss of one of the most valuable outward-bound trade fleets that ever failed from the harbours of England, considered merely in respect of property; but when the nature of the property was taken into the account, that it contained naval and other stores designed for the use and protection of our West-India islands, our squadrons in that quarter of the globe, and our other distant dependencies; that it weakened our marine and land operations, or had rather totally suspended them till replaced, and that this invaluable property had fallen into the hands of an enemy, to be employed against us, the magnitude of the loss was such as to exceed his powers of computation.—His Grace concluded a short, but spirited and well conceived speech, with moving:

"That an humble address be presented to his Majesty, that he will be graciously pleased to give directions that there may be laid before this House copies of the orders and instructions given to Captain John Moutray, of his Majesty's ship Ramillies, in July or August last, respecting his taking under his command a number of merchant ships bound to the East and West-Indies, and other parts, so far as relates to Captain Moutray's being directed to go to the island of Madeira; or respecting his being particularly cautioned to use his utmost endeavours to avoid sailing in such a tract as might risque his falling in with the enemy's fleet."

And also, "A copy of Captain Moutray's letter to the board of Admiralty, giving an account of the capture of a great part of the merchant ships under his care, on the 9th of August last."

Earl of Sandwich.

The Earl of *Sandwich*, in reply, rose, and said, so far was he from having the smallest objection to the present motion, that he begged leave to second it. He thought the House and the public were entitled to have the fullest satisfaction, respecting the loss of so very important and valuable a fleet as that to which the noble Duke had alluded, and

therefore in order to throw the greater light upon that affair, he would, with the leave of the Houſe, move an addition to the noble Duke's motion, and call for a paper which in his opinion, would aſſiſt materially in convincing their Lordſhips, that it had not been owing to any neglect of his, that ſo fatal an accident had happened; on the contrary, previous to the fleets' ſailing, orders had been ſent out to Admiral Geary, to give them every protection the exigencies of the ſervice might admit of, and in the performance of that duty, to riſque a battle with the enemy, however ſuperior; that every information Miniſters received, Captain Moutray was in poſſeſſion of; and as to ſending out a ſtronger convoy, merely for the purpoſe of protecting the trade fleet, it would have been extremely wrong, for either it ſhould be ſuch a force as was able to cope with Don Cordova, or the noble Duke muſt confeſs, that ſending out a ſmaller force, in the caſe it ſhould be met by the enemy, would be only devoting it. When the news of the accident arrived, he did aſſure their Lordſhips, no man in the kingdom felt greater ſorrow than he did, neither was any man more conſcious of the value of the fleet captured, and of its great importance under every conſideration; as a proof of this, more than ordinary care was taken to guard againſt an accident, which it was not, as it afterwards appeared, in human wiſdom to prevent. The noble Duke had ſaid, that a ſhort time previous to the fleet's ſailing from England, it was known that the combined fleets were at Cadiz, and that they meant ſoon to ſail from that port; this was very true, and in conſequence of that knowledge, Admiral Geary had been ſent out with all the ſhips, that were ready at the time, with expreſs inſtructions ſuited to the occaſion. After he had ſailed a ſufficient time, to render it moſt probable that the great fleets of merchantmen for the Eaſt and Weſt-Indies might ſail with the utmoſt ſafety, thoſe fleets were ſuffered to ſail; and ſurely if ever there was a moment when it was moſt wiſe and prudent to truſt a valuable fleet of merchantmen to ſea, it was when the great fleet of England was out, and out with the expreſs order to clear the paſſage. Nor was the ſafety of the fleet truſted merely to this chance, though according to common obſervation, it might without raſhneſs have been conſidered as a ſafe venture. At firſt it was imagined that a few frigates would be a ſufficient convoy, but on a ſecond thought that was over-ruled, and the Ramilies, a 74 gun ſhip, and the only ſhip of the line then ready, was diſpatched with them. The care of the Admiralty

Admiralty did not even ſtop there, but while the fleet lay wind-bound, two more ſail of the line, the Prothee and the Bienfaiſant, one of which returned to Corke and the other parted company, were got ready and added to the convoy, ſo that the fleet ſailed at laſt under the protection of three ſhips of the line and three two and thirty gun frigates, a convoy much ſtronger than had ever been known to be ſent on ſuch an occaſion, eſpecially when the weſtern ſquadron was at ſea. He was very happy that the noble Duke had moved for the inſtructions, becauſe when they ſhould be produced he made no doubt but they would tend to a full exculpation of the Admiralty Board. It was enough for that officer that he had met the convoy and kept company with it till the 2d of Auguſt, off Cape St. Vincent, the very latitude the noble Duke had deſcribed, and it could hardly be preſumed, that if Admiral Geary thought it neceſſary, that he would have neglected to accompany it farther. Commodore Johnſtone fell likewiſe in with Captain Moutray, and informed him that when he left Liſbon an account had been received there that the combined fleet was ſailed, ſo that taking the conduct of the Admiralty Board in any light, either in reſpect of the inſtructions under which Captain Moutray ſailed and Admiral Geary acted, or in reſpect of ſubſequent events, no blame could be juſtly imputed to the Board at which he had the honour to preſide.

The noble Duke had laid great ſtreſs on the fleet's having been permitted to ſail in the track for Madeira, with an intention to touch at that Iſland, and had aſked, why that was ſuffered?—He would tell the noble Duke why—becauſe the merchants, who owned the fleet and the ſhips cargoes, had expreſſly deſired it; becauſe it was thence forward a neceſſary place of deſtination, an eſſential part of the buſineſs of the fleet being to touch at Madeira and take wine on board. With regard to their going or not going to Madeira, the Houſe muſt ſee, that it was a matter of perfect indifference to the Admiralty; they had no concern in the freights of the ſhips; all their connexion with the tranſaction was merely to convoy the fleet to the place of its deſtination, agreeable to the requeſt of the merchants, and with ſuch a convoy as was moſt likely to enſure the fleet a ſecure paſſage. The noble Duke had hinted that it was known the Spaniſh ſquadron had been lying in wait for this fleet. The noble Duke was miſtaken, and nothing could prove this more ſtrongly, than the Spaniſh Admiral's letter to his own court, which had been intercepted,

 and,

and in which that commander expressed his extreme surprize at having fallen in with the fleet, declaring that "nothing could have been farther from his expectations." Another thing he must take notice of, which the noble Duke had observed, and that was, that the fleet ought to have had a stronger convoy;——here he must again differ in opinion from his Grace. The convoy he had already stated was unusually strong, besides the additional expectation of safety arising from the circumstance of the western squadron being at sea, for the purpose of intercepting the fleets of France and Spain. And, when it was considered, that the fleet was captured by so great a force, their Lordships would see, that, great as the calamity was, it was not to be avoided by any convoy, however strong, unless the western squadron had sailed as convoy.

The Admiralty could not possibly judge for Captain Moutray in all given situations; he had every information already stated under all the circumstances he had now mentioned, and as for the rest, the Captain was left to act agreeably to his own judgment, upon events as they might arise.——He would, as he said, when he first rose, move for another paper; the paper which he meant to call for, was so much of a letter from Admiral Geary, dated at sea, the 2d of August, as related to his falling in with the Ramillies and her convoy, bound to the West-Indies, which would shew the House clearly, what the probability of danger was, on the day the letter was dated, and whether every possible precaution had not been used, that human wisdom could suggest. Before he moved for that paper, his Lordship said, it might be necessary for him to observe, that the noble Duke had gone pretty much at large into a general review of the state of affairs—he should not follow the noble Duke into that subject, and the reason why he would not, was, because he did not think the present was the proper time for it; it might come on as a topic of discussion hereafter; one matter, however, he must take notice of, and that was, the noble Duke's complaint that Admiral Rodney had gone to Gibraltar with his ships, in his way to the West-Indies; here he must differ with the noble Duke exceedingly—so far from considering this a matter deserving censure, he was astonished to hear it spoken of in the language of complaint. In consequence of that circumstance taking place, we had taken and destroyed one entire Spanish fleet, consisting of six of their ships of the line, adding several of them to our own marine, dispersed and routed another,

other, and effectually relieved Gibraltar. Gibraltar, their Lordships would consider, could only be relieved by a powerful fleet; and surely, if the merits of any plan were to be judged of by events, there could not have been a more wise, nor a more glorious plan for this country, than that of sending Sir George Rodney to the relief of Gibraltar. Having said this, his Lordship declared, that he should only remark, in answer to all that the noble Duke had let fall in description of our future prospects, that they did not strike him in the same gloomy point of view; the situation of affairs was undoubtedly critical, but he saw no manner of reason for despair. His Lordship concluded with moving,

"That an extract from the letter of Admiral Geary, of the 2d of August, 1780, to Philip Stevens, Esq. as far as relates to his falling in with the Ramillies and her convoy, bound to the West Indies, be laid before this House."

Duke of Bolton.

The Duke of *Bolton* rose to reply, and after thanking the noble Earl, for having, not only seconded the motion, but moved for an additional paper, that he believed would materially contribute to clear up the matter, respecting which he thought an enquiry highly necessary, said the noble Earl had mistaken him in one point,—he had not complained of the convoy being too small, considering that the fleet of England was out, he had only meant, that had not that been the case, it ought to have been stronger, and he still thought Admiral Geary should have had instructions to have stretched across the latitudes of Cape St. Vincent, and seen the East and West-India fleets clear of the land, knowing, as Admiral Geary must have done, that the combined fleets were to sail from the port of Cadiz, and knowing also, as every seaman must know, that a strong wind from the north-west quarter frequently blew, with the current, which in that case sets in strongly, would consequently force the convoy to the eastward, and as it really turned out, drive it into the very mouth of the enemy. It was no rule, he said, because it had been usual for West-India fleets to touch at Madeira in time of peace, that they should do so in the midst of summer, when we were at war with France and Spain, and when we knew that it was highly probable the combined fleets would cruise in the track to Madeira. New situations required new customs, and he called upon the noble Lord to declare, whether he had not frequently signed orders for convoys going with West-India fleets, which were not to touch

at Madeira? The noble Earl ſaid, the merchants had deſired that the fleet might touch at Madeira. If they had, to be ſure it was a juſtification of the Admiralty, but it was rather extraordinary to him, to hear that they had, becauſe the merchants who had converſed with him upon the ſubject, had all found great fault with the convoy's having been ſuffered to ſail with an intention to touch at Madeira. The noble Lord ſaid, that Geary had a powerful ſquadron under his command, he had ſo, and therefore the Admiralty were the more to blame. —But ſuppoſing that the noble Earl did not think it prudent to ſend out great force too far to the ſouthward, and thereby neglect the home defence, the noble Lord had no apology, when he knew it was not in his power, conſiſtent with the national ſafety, to protect the convoy by force of arms, to neglect that ſpecies of continual protection within his reach, he meant ſtriking out ſuch a track and ſuch longitudes as would have kept it clear of the land, and conſequently clear of danger.

When the noble Lord ſaid, that the merchants would have this, and the merchants would have that, he held a language which, ſo far as it went, proved him totally ignorant of his duty, and unacquainted with the nature of his office.—It was abſurd to ſuppoſe, allowing the fact to be exactly as the noble Earl had ſtated it, that the merchant, whoſe property the greateſt part of the convoy was, would ruſh headlong on their own ruin. It was to the laſt degree prepoſterous, to even preſume it, and it was in every reſpect incredible. He was ready to grant, that in point of convenience, and in ſeveral other reſpects, the merchants would have been deſirous to have the convoy touch at Madeira; but under what idea?—That was the point, and the only one, which tended to reveal the truth.—Moſt certainly, on the idea that the weſtern ſquadron, being then out, ſuch operations, and ſuch a plan for a naval ſummer campaign had been determined upon, as either to compel the enemy to remain in port, or if they durſt have ventured out, as would have led to an engagement, and moſt probably terminate in victory.

Earl of Sandwich.

The Earl of *Sandwich* roſe again and ſaid, that the track choſen was at the earneſt requeſt of the merchants, who inſiſted on the neceſſity of the convoy touching at Madeira: the loſs was therefore their own, it was no concern of the Admiralty.—The noble Duke wiſhed to know, if the Admiralty Board had not frequently ſigned orders for convoys bound for the Weſt-Indies, in which no direction or liberty

was

was given to touch at Madeira in their way.—He often had, and presumed he would again, but the choice rested with the merchants, and the orders usually were founded on their requisition, whether the track was that of Madeira, or a more western longitude.—It was always usual for one of the annual fleets, at least to touch at that island.—The wine which that island produced made part of their cargo, and it was, he believed, well understood both in Great Britain and the West-Indies, that wine was at once a necessary and profitable part of the venture in all voyages of this kind.

The Duke of Bolton's motion was then put, with Lord Sandwich's amendment, and agreed to without any opposition.

November 17.

At one o'clock, the Earl of Pomfret, attended by the Governor of the Tower, came to one of the coffee-houses in Old-Palace yard, where his Lordship continued till the sitting of the House of Peers; he was then conducted to the chamber belonging to the Usher of the Black Rod, and at a little past three, his Lordship went to the bar of the House, conducted by the Governor and Sir Francis Molineux. As soon as Lord Pomfret got to the bar, the Lord Chancellor spoke as follows:

"My Lord,

"The House has commanded me to express the just offence and displeasure which the Lords have conceived, at the heinous insult which you have committed upon the dignity and privilege of this House, in the person of a Peer, by sending to the Duke of Grafton the letters which have been read; wherein are contained expressions most unworthy and unfit to be used by a person of honour, unto a person of the like quality: And I am further commander, by order of this House, to give you this solemn and severe reprimand for the same. But in consideration of the submission contained in the humble petition, which you presented to this House on Monday last, the Lords are content to remit your further punishment, upon your making such acknowledgment and submission to the House, and entering solemnly, and upon your honour, into such engagement as this House hath thought fit to order, and prescribe for that purpose."

Earl Pomfret being then taken from the bar, and admitted to his seat in the body of the House, spoke as follows:

"My

"My Lords,

"I felt the most sincere concern at having merited the displeasure of your Lordships, by sending to the Duke of Grafton, a Peer of this House, the rash and unadvised letters which have given your Lordships so much and so just offence, for which I most humbly ask pardon of this most honourable House: they were dictated by the suspicion of an affront, which I am now convinced his Grace did not offer. I do here promise solemnly, and upon my honour, that I will not further pursue any measure of violence against the person of the Duke of Grafton, or against any other person, upon the account of such suspicion, or of any thing that hath passed upon this occasion."

His Lordship, having made this submission, was ordered to be discharged out of custody, upon paying his fees.

No. 1.

This day the following papers were laid before the House, having been moved for by the Duke of Bolton.

November 21.

By the Commissioners for executing the Office of Lord High Admiral of Great Britain and Ireland, &c.

"Whereas we have ordered Captain Garnir, commander of his Majesty's ship Southampton, now at Spithead, to take under his convoy the five East-India ships, whose names are in the margin, together with the victuallers and storeships, named in the inclosed list, or such of them as may be arrived at Spithead; and also the trade bound to the West-Indies, and any other victuallers and storeships bound thither, as may be ready to sail, and then putting to sea, with the very first opportunity of wind and weather, to proceed down the channel, sending the Thetis, which we have put under his command, a-head, to inform you of his approach, and upon your joining him, to follow your orders for his further proceedings.

Hilsborough, Mountstuart, Royal George, Godfrey, Gatton; and 88 victuallers, storeships, and transports, as specified in the original.

You are hereby required, and directed to hold yourself in constant readiness, to put out in the ship you command, when the Southampton makes her appearance in the offing, and taking her, and the Thetis, under your command, and the East-India Company's ships, with the victuallers, storeships, and trade above-mentioned, under your convoy, put to sea, and proceed with them, as expeditiously as possible, consistent with

with their security, towards the places of their destination, touching at the island of Madeira, and taking in there, without a moment's loss of time, such wine as may be necessary for the companies of the said ships under your command; and then make the best of your way off Carlisle Bay, in the island of Barbadoes, seeing the East-India Company's ships in safety, as far as your way and theirs lie together.

'Upon your arrival off Barbadoes, you are to leave there the trade bound to that island and Tobago, and put the victuallers and storeships, laden with provisions and stores, for the use of his Majesty's land and sea forces, upon the leeward island station, under the charge of Captain Linzee of the Thetis, directing him to proceed with them to St. Lucia, or wherever else his Majesty's fleet and army may be; and, upon joining Sir George Rodney, or the commanding officer for the time being, of his Majesty's ships on the above mentioned station, to deliver the inclosed pacquet, bearing his address, and put yourself under his command, and follow his orders for his further proceedings.

'Having made this arrangement, you are to proceed in the ship you command, accompanied by the Southampton, to Jamaica, with such of the victuallers, storeships, and trade under your convoy, as may be destined to that place or Pensacola; seeing, in your way, the trade bound to Antigua, Nevis, Montserat, and St. Christopher's, in safety to those islands respectively. And when you arrive off the east end of Jamaica, detaching the Southampton, with the trade bound to the ports on the north side of it, with directions to her captain to follow you to Port Royal, to which place you are to proceed, without a moment's loss of time, with the Ramillies, and the remainder of your convoy, putting yourself, and directing the captain of the Southampton to put himself under the command of Sir P. Parker, or the commanding officer, for the time being, of his Majesty's ships off Jamaica, and follow his orders for your further proceeding.

'And, whereas the Arwin galley, one of the store ships named in the afore-mentioned list, is laden with tents and camp equipage, for the troops in the Leeward Islands, you are, in pursuance of the King's pleasures, signified to us by Lord George Germain, one of his Majesty's principal Secretaries of State, to pay particular attention to her, and direct the captain of the Thetis to do the like, and see her to St.

Lucia, or wherever the army may be, without one moment's loſs of time.

'Given under our hands the 14th day of July, 1780.

(Signed) SANDWICH,
J. BULLER,
LISBURNE.'

Capt. Moutray, Commander of his Majeſty's ſhip Ramillies, Plymouth.

By command of their Lordſhips,

PHIL. STEPHENS.

No II.

By the Commiſſioners, &c. &c.

'Whereas we think fit, that his Majeſty's ſhips named in the margin, together with the Inflexible, if ſhe arrives at Spithead in time, ſhall accompany you 100 leagues to the weſtward of Scilly, *for the greater ſecurity of the Eaſt India ſhips, victuallers, ſtoreſhips, tranſports, and trade under you convoy*, and we have given directions accordingly to Captain Cotton, of the Buffalo, now at Spithead; you are therefore hereby required and directed, in addition to our order of yeſterday's date, to take the ſaid Captain Cotton, and thoſe ſhips under your command, for the greater ſecurity of the convoy, until you get the above diſtance to the weſtward of Scilly accordingly; and then you are to make the ſignal for them to ſeparate, and to put in execution ſuch further orders as the ſaid Captain Cotton has received from us

Buffalo,
Alarm,

'Given on the 15th of July, 1780.

(Signed) SANDWICH,
LISBURNE,
R. MANN.'

Captain Moutray, Commander of his Majeſty's ſhip Ramillies, Plymouth.

No. III.

Extract of a letter from F. Geary, Eſq; Vice Admiral of the White, &c. to Philip Stevens, Eſq. Secretary to the Right Hon. the Lords Commiſſioners of the Admiralty; dated at ſea, Aug. 2, 1780.

'At four this morning, the advanced ſhip of the ſquadron made ſignal for a fleet on the lee bow, which proved to be his Majeſty's ſhips the Ramilies, Inflexible, Buffalo, Alarm, Thetis, and Southampton, with five Eaſt-India ſhips, and a large convoy for the Weſt Indies: and as Captain Moutray's orders were, to take the Inflexible, Buffalo, and Alarm, 100 leagues

leagues to the Westward of Scilly, and the squadron under my command being then 92 leagues from that place, and as it was a convoy of great consequence, I thought it my duty for their better security to see them that distance, which I had done at one o'clock Scilly then bearing 54 East, dist. 1 2 leagues; and then the Ramilies, Thetis, and Southampton, and convoy, parted company, with a fine fresh wind at N. N. E.'

No IV.

Copy of a letter from Capt. John Moutray, Commander of his Majesty's Ship Ramilies, to Philip Stevens, Esq; dated at sea, the 9th of Aug. 1780

' SIR,

' I am sorry to acquaint you, for the information of their Lordships, that this morning at one o'clock being in the latitude of 36, 54. N. and longitude 15. 00. west of London, I perceived the lights of a fleet, which I judged were those of the enemy; upon which I immediately made the signal for the convoy to bring to on the starboard tack: at half past one made the signal to make sail after lying to, and keep close to the wind, which was at N. N. E. till day light; I then found it necessary to make the signal for the convoy to disperse, finding to my utter astonishment three flags, and the greatest part of the combined fleet in chace of them, and seven line of battle ships and a frigate well up in the wake of the Ramilies, Southampton and Thetis; but by dint of sailing they happily escaped: a great number of the convoy in a short time after struck, and I have the greatest reason in the world to believe, the greatest part of them must unavoidably be taken, as a number of ships was firing at them.'

' In consultation with the Captains Garnier and Linzee, I have dispatched Capt. Linzee in the Thetis being the best sailor, with this unfortunate account to their Lordships.

' If I can weather the fleet, I shall proceed off Madeira to the place of rendezvous to take from thence the ships that may have escaped, as frigates will no doubt be sent to intercept them, the enemy having taken several ships that had the sealed rendezvous.

I have the honour to be, &c

(Signed) JOHN MOUTRAY.'

November 22

Duke of Bolton.

The Duke of *Bolton* gave notice, that as no business was expected to come on before the recess, previous to his making the motion for laying before their Lordships the instructions

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given by the Admiralty Board to Capt. Moutray, in consequence of which, were the question to be taken up at present, there would be a very thin attendance, he took the opportunity of informing the House, that he would defer his intended motion till early after the Christmas recess.

On the 27th of November the House adjourned to the 25th of January, 1781.

January 25, 1781.

Lord Stormont.

Lord *Stormont* rose, and informed their Lordships, that he was charged with the delivery of a message from his Majesty, which he offered in the usual form. The message was accordingly read, and was conceived in the following terms:

"George R.

"His Majesty judged it proper to acquaint the House of Lords, that during the recess of Parliament, he has been indispensably obliged to direct letters of marque and general reprisals to be issued against the States-General of the United Provinces, and their subjects

"The causes and motives of his Majesty's conduct on this occasion are set forth in his public declaration, which he has ordered to be laid before the House.

"His Majesty has with the utmost reluctance been induced to take an hostile measure against a state, whose alliance with this kingdom stood not only on the faith of ancient treaties, but on the soundest principles of good policy. His Majesty has used every endeavour to prevail on the States-General to return to a line of conduct conformable to those principles, to the tenor of their engagements, and to the common and natural interests of both nations and has left nothing untried to prevent, if possible, the present rupture.

"His Majesty is fully persuaded that the justice and necessity of the measures he has taken will be acknowledged by all the world. Relying therefore on the protection of Divine Providence, and the zealous and affectionate support of his people, his Majesty has the firmest confidence, that by a vigorous exertion of the spirit and resources of the nation, he shall be able to maintain the honour and dignity of his crown, and the rights and interests of his people, against all his enemies, and to bring them to listen to equitable terms of peace." "G. R."

His Lordship likewise presented several state-papers, eight in number, consisting of the memorials presented within the last eighteen months by Sir Joseph Yorke, his Majesty's Ambassador extraordinary and plenipotentiary to the States General

neral of the Seven United Provinces. The deputy clerk of the crown having read all but the last; when he came to this last number, which was a copy of a treaty of commerce, to be agreed upon between the States General of the United Provinces and the United Independent States of America, entered into on the behalf of the United Provinces, by the grand pensionary of Amsterdam, Van Berkel, and on that of the United States of America, by Mr. John Lee, executed at Breda, and dated September 1778—his Lordship being at the table, said in a low voice to the clerk, "You need not read any part but the first and two last articles." The clerk accordingly proceeded.

Duke of Richmond

His Lordship was rising to make his intended motion, when the Duke of *Richmond* rose, and asked if the papers now read contained all the information the noble Viscount proposed to lay before the House? Until he was satisfied on that head, it was impossible for him to know how to conduct himself. His Majesty now made a communication to the House of a measure which he thought fit to adopt during the parliamentary recess. He ordered certain papers to accompany that communication, which, however necessary in themselves, were imperfect. Before therefore any farther step was taken, he wished to know from the noble Viscount, whether those papers contained the whole of what was intended to be communicated? Lord Stormont remained silent. His Grace observed, that the papers on the table contained only a partial account; that nothing appeared concerning the motives and reasons which influenced the conduct of the States General; consequently, nothing which could be relied on. For his own part, he should ever prefer no account to a partial one. He wished, at this particular crisis, to strengthen the hands of government as much as possible; but the duty which he owed to his sovereign, his country, and himself, forbid him to approve of measures which, under the semblance of wisdom, equity and vigour, might prove big with ruin, mischief and injustice. Perceiving that the noble Viscount seemed disinclined to give any answer; if the House was to trust to the imperfect, garbled information now before it, he should at least take care, that, such as it was, the House should hear it. The noble Viscount, when the clerk read the title of Number 8, desired him to read it short. He acquiesced, in hopes that other materials, if called for, would be given; but the noble Lord's silence not having indicated any such intention, he would insist to have number 8 read at length.

The

Lord Chancellor. The Lord *Chancellor* said that it was of very little consequence, he believed, whether the paper alluded to was read short or long. The title of it fully imported its contents. It was a treaty between the States General of the seven United Provinces, and the United States of America, as they termed themselves. The intimation given to the clerk by the noble Viscount was no act of the House. It was a proposition made by the noble Lord to save time and unnecessary trouble, and was merely acquiesced in by connivance; for without doubt, in the ordinary course of proceeding, the noble Duke had a right, if he thought proper, to desire the paper to be read verbatim.

It was not to be expected that the noble Viscount could give an answer. His Majesty had charged him with the delivery of the message, and of the several papers that accompanied it, which was the information intended to be given. They were sufficient, in his opinion, though there were no other documents. The manifesto included in the state papers fully justified the measure. It stated that treaty which was the subject of the present conversation; a treaty expressly entered into between an ancient ally and our own rebel subjects. It would have been criminal and perfidious in any power in a state of common amity with us; it was doubly so coming from an ally; and what, if possible, aggravated the conduct of the States General, and gave it still a deeper complexion, it was secretly carried on at a time when we were in a state of actual alliance and professed friendship: yet, though there were no other objection to what had been urged by the noble Duke, there was enough to fortify him in his opinion of the impropriety, or rather informality, of entertaining any other question or consideration whatever, till his Majesty's message should be first disposed of.

Duke of Richmond. The Duke of *Richmond* rose with some warmth, and lamented the situation every noble Lord stood in who differed from ministers. They had every thing to contend with, and that without the most distant prospect of success. They were certain to be over-borne by numbers; and besides the evil flowing from bad measures, which they were bound to feel in common with others, they suffered the further mortification of having their efforts imputed to improper motives; but while he was conscious that he acted upon right motives, he would prefer his duty to every other consideration, and encounter whatever difficulties might stand in the way.

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The noble and learned Lord talked of acquiescence and connivance respecting the reading the paper marked No. 8, short. For his part, if ministers determined to withhold all other information but the partial extracts on the table, he would neither acquiesce nor connive at the short reading proposed; if their Lordships were to give a sanction to the present measure, in a manner, in the dark, he would for one insist that No. 8 be read at full length. It was all their Lordships had to guide and lead them through this mysterious and unaccountable business, and he was determined that he would at least make the experiment of learning whether or no the paper contains any thing which should render it more clear and satisfactory? If not, he should most certainly move for all the information or proceedings in this business; and as he foresaw he should, as usual, be out-voted by a great majority, he would take an opportunity of testifying, by a protest signed with his name, his disapprobation of a war, which, for aught that yet appeared, had been wantonly commenced, and might be productive of the most fatal consequences.

The deputy clerk of the crown then proceeded to read the treaty or paper marked No. 8. which was very long; as soon as it was finished, Lord Stormont and the Duke of Richmond presented themselves at the same instant to the woolsack, and after a short pause his Grace was permitted to go on.

Duke of Richmond

He said, he felt the most earnest desire that the proceedings and deliberations of the present day might be accompanied with unanimity. He was aware of the very disagreeable predicament in which he stood. He foresaw the event of any opposition he could make; and that every thing suggested at that side of the House, would be over-ruled. He knew, likewise, that the present measure was a popular one. He was not ignorant of the imputations which would be thrown out on whoever opposed it in any form, or upon any ground; but not even all this, his earnest wish for unanimity, his being overborne by numbers, or any other circumstance alluded to, should deter him from a faithful and conscientious discharge of his duty. Upon that single principle he had always determined, and ever would act; and notwithstanding the various discouragements he should have to encounter with, he would nevertheless steadily persevere. He had hoped, at the outset of this business, that every paper or communication necessary for their Lordships' full information would be laid before the House; but from what already passed, he was convinced that nothing was more vain and idle than such an expecta-

expectation. Miniſters had previouſly determined there ſhould not, and that experience had proved, beyond doubt, was ſufficient even in the moſt ſanguine mind to baniſh all hopes of ſucceſs.

He had long ſince determ'ned to abſent himſelf from any attendance in that Houſe, and he believed this would be the laſt time he ſhould ever trouble them upon any thing which immediately related to the conduct of government in reſpect of the American war. Be that as it may, the preſent occaſion was, in his opinion, clearly out of the queſtion. He [illegible] he was much aſtoniſhed to learn, by what fell from the noble Lord on the wooltack, that it was the intention of miniſters that the deciſion of that day muſt be taken from a few partial extracts from the inſtructions given to the Britiſh miniſters at the Hague, the manifeſto formed upon thoſe extracts, and a project or pretended treaty between Van Berkel and Mr Lee.

Such being the conduct of miniſters, he was reluctantly forced to ſeek other and more relative information. Though entertaining no proſpect of ſucceſs, it would afford him an opportunity of declaring his ſentiments to the public, and entering the reaſons which induced him to oppoſe the meaſure now intended in the manner and on the grounds on which it was meant to oppoſe it, on their Lordſhips' journals. As ſoon therefore as the noble Viſcount ſhould move an addreſs, in anſwer to the King's meſſage, he intended to move an amendment for the production of the whole of the correſpondence, or for copies of all memorials, inſtructions, anſwers, &c. which had paſſed between the Britiſh cabinet and the States General of the United Provinces.

Lord Stormont.

Lord *Stormont* then roſe, and ſaid, that however willing he might be to addreſs their Lordſhips in relation to the royal meſſage with which he was charged, and in anſwer to which it was his intention to move an addreſs, he waited with pleaſure till the noble Duke who ſpoke laſt had explained his intentions, as he always did when his Grace had any thing to communicate to the Houſe, no perſon being better informed, nor more capable of treating with ability every queſtion which came under his Lordſhip's conſideration.

As to the defectiveneſs of the information objected to by the noble Duke, he little thought that any ſuch objection would have been ſtarted; and as to moving for papers, till the meſſage was diſpoſed of, he believed it would be a proceeding altogether unprecedented and unuſual. Whatever

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the judgment of the Houſe hereafter might be, he underſtood, that the meſſage was always previouſly determined upon, as a matter of courſe.

His Lordſhip then proceeded to ſhew, from the papers, that the meaſure of iſſuing letters of marque and repriſals, was not only juſtifiable, but was founded in neceſſity and ſound policy. The States-General had behaved baſely and treacherouſly: connected by the moſt ſolemn alliances; united by ties the moſt ſacred and indiſſoluble; bound by common intereſt, and urged by motives of mutual preſervation, we had nothing apparently to fear from them:—we had, on the contrary, every thing to expect which affection, cemented by a mutuality and reciprocity of intereſt and advantage, could promiſe, and honour and fidelity could exact.

But in all theſe expectations we had been miſerably diſappointed, and baſely deceived. The States-General had violated their moſt ſacred engagements; they had acted as ſecret enemies; and what was worſe, they carried on thoſe ſecret machinations under the colour of friendſhip—They had entered into a conſpiracy with our natural enemies and rebel ſubjects, to diſmember the Britiſh empire, and to parcel out our dominions. This would be baſe and unworthy even from a neutral power; but when it came from a pretended ally, and an avowed friend, it deſerved public execration; it ſtamped the nation who could be guilty of it with infamy and ignominy, and called aloud for the moſt exemplary chaſtiſement.

The papers on the table, conſidering the ancient treaties ſubſiſting between the two nations, eſtabliſhed the truth of every thing which he had affirmed, and would juſtify remarks of ſtill greater ſeverity. He would paſs over the ſingular obligations for which the republic ſtood indebted to this country. He would only reſt his arguments upon plain facts, collected either from the terms of exiſting treaties, or the conſequent conduct of the States-General.

By the treaty of 1674, it was true, the States-General were permitted to carry indiſcriminately all goods, commodities, and merchandize whatever to our enemies, as well as friends and neutrals; but by the two ſubſequent treaties of 1678, and 1716, it was ſpecially provided, that when either power ſhould be attacked in any of their dominions, that the other, upon the *caſus fœderis*, ſhall aſſiſt with a certain number of troops and ſhips. By this it was plain that the ſubſequent treaty, at a certain period, at leaſt, ſuperſedes the

treaty of 1674; that is, after the requisition made by the party attacked, to his ally, and the assistance given in consequence of that requisition, which the treaty provides shall be at the end of two months from the date of the demand. Upon these plain, notorious facts, how then will the case stand? Most certainly, that the treaty of 1674 is rendered of none effect by the two latter treaties of 1678 and 1716; for surely it would be the most absurd, contradictory, and nugatory construction possibly conceivable, to suppose, after the requisition made, the quotas granted, and actual hostilities commenced, that the ships of Great Britain, or the republic, taking the event either way, should trade and carry on a commerce with France or Spain, or any other power, which either, and of course, both after a certain period must be at war with; it was repugnant to the most familiar rules of common sense and common experience. Either the treaty of 1674 ceases to operate the very instant the *casus fœderis* begins to exist, or both cease; or, if possible, a greater absurdity would take place, that of the treaty of 1674 being always binding on the contracting parties, and the treaties of 1678 and 1716 never binding upon either.

He would rely on the judgment of their Lordships, whether by fair construction this was not the spirit, as well as letter of the treaties alluded to; and if after application made, and the expiration of the interim between the application and the performance of the condition, was not the very instant in which the subsequent condition was to take place, and to supersede the precedent one, in relation to the liberty of supplying the enemy with military stores, as included in the general and unqualified description of all goods, merchandizes, &c.

But even to wave this point, and relinquish every advantage which might be drawn from it in favour of Great Britain, it would not be improper to state the transaction in point of fact.

What did the republic wish to obtain by this exclusive liberty, so contrary to the law of nations, as that of supplying the enemy with the means of carrying on the war? The fact was simply this: the Dutch claimed the right of supplying the enemy; it is, say they, a commercial transaction, the mere object of gain; let then their Lordships look upon it even in that light. Neither the republic, nor any of their subjects suffered any detriment as merchants or common carriers; for the bottom of ship, when vessels laden with military stores were seized, were liberated; and if the property

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was Dutch, a reaſonable and fair price was given as an equivalent to the owner: if, on the other hand, the cargo belonged to an *enemy*, it was confiſcated, and condemned as legal prize; in neither caſe was the ſpirit of the treaty of 1674 violated. The treaty never meant nor expreſſed in any way that Dutch bottoms were to protect the goods of an enemy, nor any more than that Dutch property, though deſigned for the uſe of an enemy, ſhould not be condemned as lawful prize in our Admiralty Courts.

After having endeavoured to prove, by a great variety of collateral arguments, that we had not departed from the treaty of 1674, conſidering it as a diſtinct engagement; that the *caſus fœderis* began to exiſt as ſoon as the time limited for performing the terms of the requiſition was expired; ſuppoſing even that we had broke one treaty, and were not of courſe entitled to claim the ſuccours from Holland; yet in that event, the conduct of Holland amounted to an unprovoked aggreſſion on their part, ſo long as they continued to conceal their treacherous intentions, under the fair appearance of friendſhip and alliance. It was true, the treaty, or the contents of the paper ſigned No. 8. was a *ſecret* tranſaction, as to the mode of conducting it; but it was avowed in its object, and ſpecific and direct in its conſequences: it originated in treachery, and was open, direct, and premeditated, intended to be carried into execution at ſome given or eventual period. It was making war upon this country, and was a ſpecies of aggreſſion every way correſpondent in its nature to an avowed act of hoſtility. It was a treaty with a part of our ſubjects in open rebellion, and called into queſtion, as all other offenſive acts do, our undoubted rights and ſovereign dominion over a part of our own territories.

His Lordſhip next entered into the detail of the conduct of the States-General, reſpecting either their direct refuſing to give any ſatisfaction, or by their evading to give any by ſtudied plauſibilities, pretended impediments, and artful delays, originating from a fixed ſyſtem of procraſtination; obſerving, that they had either trifled with our Miniſter, treated his remonſtrances with neglect, or denied all kind of ſatisfaction. He did not wiſh to be underſtood as involving the whole of the United Provinces in the ſame general charge; their councils were, unhappily for the body of the people, influenced by faction, and by partial intereſt. They were under the dominion of a *Gallo-American* faction, and the people were ſeduced and led away from their *real* intereſts, through the arts and machinations of ſelfiſh and ambitious men. He ſhould ever

condemn any policy which had not justice and good faith for its basis; because the contrary seldom failed of bringing after it its own punishment, honesty he would ever maintain was the best policy, and moral rectitude should ever be received by him as a test of the wisdom, as well as justice, of those kingdoms or states, which made it the rule or basis of their public conduct. He had no doubt but the time would shortly arrive, when the people of Holland, now infatuated, or ruled by a *Gallo-American* faction, would perceive their error, and punish the authors of their misfortunes in a manner suitable to their deserts. It was, in his opinion, astonishing, how they could be so far seduced; or how they could sacrifice the first principles of prudence and policy to the imaginary and fanciful expectations of interested or speculative men. He was persuaded, that this infatuation, besides not being prevalent among the *body* of the people, was far from being universal, even among the governing powers. The *true* friends of their country looked upon their interests in another view; it was indeed impossible that it could be otherwise. Every wise Hollander must see at once, that Great Britain was the only real ally and casual protector of the republic against the ambitious designs of her powerful neighbours: such a man must acknowledge, that if the power and consequence of Great Britain should be broken, or diminished, according to the evident schemes of her enemies, that the ruin or conquest of *his own* country could only be suspended, or deferred, till some of the great powers of Europe should think proper to do so, and none more likely than that power of whom his country had ever justly retained the best founded jealousies and apprehensions, and whose superiority would be the natural result of the fall of Great Britain: in short, good faith, mutual interest, and mutual preservation, extension of commerce, ancient alliance, affection, and every other circumstance which can bind or connect nations together, served to shew the blind as well as wicked policy of entering into a conspiracy with our rebellious subjects, and with their natural enemies, determined and meditating equally their own destruction with ours.

If that illustrious General, the Duke of Marlborough, or that immortal hero, the Prince of Orange, the great champion and defender of our liberties, were now alive, he would submit to their greatest admirers, whether they would not adopt a similar policy to that which dictated the present measure? Whether the latter, as Prince of Orange, would not have strained every nerve, and made every effort in his power in order to break and disconcert the dangerous league entered

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into by the Houſe of Bourbon; whether, as Prince of Orange, he had ſeen Great Britain in its preſent ſituation, he would not immediately perceive the downfall and deſtruction of his own country involved in that of Britain? And, finally, as King of Great Britain, he would not riſque every thing ſooner than ſubmit to the pride, inſolence, and wicked ambition of France and her unnatural confederates?

His Lordſhips was proceeding to explain the conduct of Van Berkel, the grand penſionary, when he was called to order by the Duke of Richmond.

Duke of Richmond

The Duke of *Richmond* roſe, he ſaid, to ſpeak to order, which he was well warranted to do, as the noble Lord whom he now interrupted had manifeſtly tranſgreſſed the eſtabliſhed rules of debate. The noble Lord, in the courſe of his ſpeech, inſtead of confining himſelf to the ſubject matter of the meſſage, in anſwer to which he had propoſed an addreſs, and the papers which accompanied it, argued from preſumptive facts, totally unfounded, in reſpect of the neceſſary evidence required on ſuch occaſions in that Houſe. This would be extremely improper and irregular, in any one of their Lordſhips, but was doubly reprehenſible in the noble Viſcount, who, from the high poſt he occupied in his Majeſty's Government, as well as the opportunities he had of learning the moſt early and ſecret information, carried with it peculiar weight, and of courſe made a ſuitable impreſſion on thoſe who heard him.

If the noble Lord had any information on the ſubject, on which he ſpoke with ſo much confidence, he muſt have gathered it from common report, or through the channel of office; if the former, it would be indecent to argue upon it in the character of a confidential ſervant of the Crown; if the latter, it was his duty to lay his information, and the authority whence he derived it, before their Lordſhips.

There was one idea that pervaded the whole of his Lordſhip's ſpeech, which ſeemed to him extremely erroneous, and was the only ground on which the manifeſto or meſſage, in his opinion, could ſtand; that was, conſidering the rough draught of a project or plan to be agreed to by the Seven United Provinces, and the United States of America, as an original paper binding upon the reſpective parties. This, it was clear, was a mere project! indeed the tenor of the paper, as well as the concluding article, expreſſly proved it, for it ſays, to be entered into by the parties mentioned. Van Berkel, and Mr. Lee, the acknowledged ſubjects of two independent

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ſtates, ſketch out a plan of a future treaty to be acceded to by thoſe ſtates. To give this plan effect, the conſent of both thoſe ſtates muſt be procured; but after a period of more than two years, ſo far from there being any ratification of this ideal treaty, there is not a ſcrap of paper, nor a ſingle proof of any kind whatever, that either of the preſumed principals in this tranſaction ever heard a ſyllable relative to the negociation or pretended treaty, much leſs that they had approved of it; yet the treaty is made the only ground of juſtification of thoſe who adviſed the iſſuing the manifeſto, and ſending the preſent meſſage.

His Grace, after ſome further obſervations of the ſame tendency, concluded with affirming, that the noble Lord had deviated from the eſtabliſhed rules of parliamentary proceeding, when he called him to order, and repeated his intention of moving for the whole correſpondence, as ſoon as his Lordſhip had concluded his ſpeech.

Lord Stormont.

Lord *Stormont* ſaid, he was far from acquieſcing in the rule laid down by the noble Duke, as binding upon the members of that Houſe; that no fact was to be ſtated, or opinion formed, but upon information regularly in poſſeſſion of the Houſe. If there was ſuch a rule, daily experience proved that it had not been obſerved, or indeed at all attended to by the noble Lords who generally ſpoke from that part of the Houſe in which the noble Duke ſat. He believed a conduct the very reverſe of this was almoſt uniformly purſued; reports and hearſays were frequently ſubſtituted for facts; and concluſions were drawn, and arguments raiſed, as if they had been in full proof: and repeated accuſations urged, apparently ill founded, at the time, or which had proved ſo afterwards. None of their Lordſhips more earneſtly wiſhed than he, that the regularity of their proceedings ſhould be preſerved, nor none felt more ſenſibly whenever they were violated; which, he was free to ſay, too often happened to be the caſe. He indeed remembered a period (at the time he firſt had the honour of a ſeat in that Houſe) when its proceedings were conducted with gravity and dignity. It was not however the caſe at preſent.

He obſerved, that the noble Duke ſought a ſpecies of information which was publicly known. The Dutch Gazettees were full of the motives which directed the conduct of the States General. After the moſt preſſing entreaties and repeated condeſcenſions on our part, when the paper which the noble Duke ſo warmly contended ought not to be conſidered as an act of the republic, becauſe it appeared to be no more than a project or plan of a treaty;—when this paper was laid

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by our ambassador before the States General, instead of disavowing it, they only disclaimed having any knowledge of it in general terms; and when an opening was given to them to disclaim the act, they declined to avail themselves, and came to a determination to refuse any satisfaction, and disposed of it *ad referendum*, to be taken up, or not, at some future opportunity.

If this was not an avowel of the treaty or project, it was clearly little short of it; and for his part he could see scarce any difference between a public act of the state, and a private act of an hostile nature committed by a subject, when the governing part of that state denied satisfaction, or refused to punish the offender.

His Lordship next stated the several stages of the progress of this business, as confirmed by the papers referred to their Lordships: and contended that the States General had acted more undfriendly and substantially hostile to us than our natural enemies the French; for although the latter, for some time before they publicly declared themselves, had been secretly assisting our enemies with military stores, by conniving at the private engagements entered into by their merchants, and permitting some military adventurers to go into the rebel service; yet when complaints were made on the subject, and remonstrances repeated, they were not always made without effect. This illicit commerce was frequently suspended, if not totally stopped, by specific orders from court; the cargoes relanded in some instances, and the sailing of the vessels countermanded in others. This was the conduct of a rival and inimical power, whereas not one of the remonstrances presented by the British minister at the Hague was in the least attended to. The noble Duke called for the counter correspondence, or the answers of the States General to those several remonstrances. It refreshed his memory, and helped him to give the noble Duke an answer to his asking what was the reason that none of the papers respecting the conduct of the States General, as stated by themselves, were laid on the table? He could satisfy his Grace by saying there were none, for the States General declined, under various pretences, to give any satisfaction whatever.

The consequence of all this was, that the Dutch, by being considered as friends and allies, it being their interest to be considered in that character, injured us daily in the most tender part, and that more effectually than if they had actually declared publicly against us: their open enmity could not have

done us the tenth part of the mischief. They supplied our own subjects in open rebellion with all the means of resistance, and he was persuaded, upon the best information, that we should never have been in our present situation, were it our good fortune that St. Eustatia had been destroyed, or sunk in the ocean. France, at the period alluded to, had no intercourse with America, and when she began to have an intercourse with her, it was by stealth, and was far from affording our rebel subjects an assistance adequate to their wants; while Holland, by making her West India possessions the mart for our American subjects, furnished them with the means of continuing the rebellion, till France, and afterwards Spain, took a public part in the quarrel.

His Lordship observed, that his Majesty acted with all possible tenderness, wishing to avoid any thing which could administer the most distant cause of offence, or be the means of embroiling those whom he wished to consider as his friends and allies, in any measures which might in their consequences involve them in a war with France. Though by the treaty of 1678, as he observed when he was last up, we were authorised to call upon them within two months after any atattack made on us, to declare war against that power, or to demand the succours prescribed by that treaty, of troops and ships, according as choice or convenience might suggest; yet on the aggression of France we forbore to insist upon the performance of that treaty; nor did we apply for those succours till France, with Spain and America, had confederated for our destruction. Nevertheless now, at the end of eighteen months, after so many repeated applications, in the character at one time of neutrals, at the other as allies, could the States General be induced to give satisfaction; so far from it, that they not only continued to supply our foreign enemies with military stores, but our own subjects, in actual rebellion; which was no less contrary to the law of nations, and the interpretation put upon the treaty of 1674 by themselves, than the first principles of justice, which bind nations not in a state of actual hostility to each other.

It was very unnecessary to trouble their Lordships further in detail; the present treaty, happily found in Mr. Laurens's papers, only confirmed what was sufficiently apparent before, that treaty furnished a key, which decyphered their whole conduct; and if the least ambiguity remained, the answer of the States General to the British minister last December put it beyond all question. They had proved themselves our most

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fatal enemies, becaufe they were concealed. The French, on the contrary, entered later into the confpiracy, and declared earlier; confequently they acted fairer, and proved lefs dangerous. The republic of Holland acted the part of an affaffin, who ftrikes and ftabs in the dark, with a double profpect of fuccefs and impunity; and we had treated that perfidious people as they deferved, and as he would treat an affaffin, if perfonally attacked; for had he arrefted the blow, and feifed the hand that gave it, he would drag the villain to the light, and when he was fatisfied that he was the real offender, he would inflict the punifhment which was due to fo atrocious a crime.

He qualified his expreffions, as not applying to the people of Holland in their collective capacity, attributing it chiefly to the effects of party, and the bold and interefted views of a Gallo-American faction, bribed by lucre and ufurious gain; but he trufted with confidence, that, be the caufe what it might, the fpirited and vigorous exertions of this country would convince them of their error, and make them repent of their perfidy. We had very wifely determined not to procraftinate any longer—we had given them the firft blow, and would probably ftun them into their fenfes. On the other hand, if we had continued to put up with further evafions, and ftudied delays, we fhould thereby have only enabled them to effect by open force what they had hitherto attempted to accomplifh by treachery and concealment. This was by no means founded in conjecture; their conduct befpoke their intention; for while they were endeavouring to amufe us, and at the fame time continuing to refufe giving us the leaft fatisfaction, they were actually making preparations for a ftate of hoftility, a further evidence that they were meditating on the means of maintaining, by open force, when the moment fhould arrive, in which all attempts of further concealment, they forefaw, would prove impracticable.

He depended much on the magnanimity of the nation, and the happy opportunity which his Majefty's meafures gave of crufhing the evil, before it arofe to a dangerous degree.—The Dutch were not yet in a ftate of preparation to effect the pernicious fchemes they had formed; and he made no doubt but one or other of the following events would be the confequence; which was all that Great Britain aimed at:—either the people of Holland, from repeated loffes and misfortunes, would compel their governors to act with juftice, and fulfil the exifting treaties; or that we fhould be able in a very

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ſhort time, by purſuing our preſent plan of hoſtility with vigour and effect, to render that republic of no avail or ſervice to the hoſtile confederacy; the former was by much the more probable: loſſes, defeat and diſappointment, if no other motive ſhould operate, would beget murmur and diſcontent among the ſubjects of the republic; they would ſoon diſcover that they had much to loſe, and not the moſt diſtant proſpect of gain; their commerce would be annihilated, or ſuſpended; they would tremble for the fate of their diſtant poſſeſſions; in ſhort, they would be enemies at all events, ſecret or open; and he believed, there was not a noble Lord that heard him who could for a moment heſitate upon a choice. For theſe general reaſons, founded in the unequivocal appearances he had mentioned, he was clearly of opinion, that the facts ſtated in the manifeſto, thus authenticated by the papers on the table, contained the moſt ample juſtification of the propriety, ſound policy, and juſtice of the meaſure communicated to their Lordſhips in his Majeſty's meſſage, in anſwer to which, he begged leave to move the following addreſs:

"Moſt gracious Sovereign,

"We, your Majeſty's moſt dutiful and loyal ſubjects, the Lords Spiritual and Temporal, in Parliament aſſembled, beg leave to return your Majeſty our humble thanks for your moſt gracious meſſage, and for having been pleaſed to communicate to this Houſe your Majeſty's public declaration, ſetting forth the cauſes and motives which have obliged your Majeſty to direct letters of marque and general repriſals to be iſſued againſt the States General of the United Provinces, and their ſubjects.

"We obſerve, with much concern and juſt indignation, that the governing part of a nation, whom the ties of common intereſt, and the faith of mutual engagements, ſhould have made a ſincere friend, has employed the moſt hoſtile and pernicious means to annoy an ancient ally, by leaguing with your Majeſty's revolted ſubjects, and furniſhing conſtant and effectual aids to your inveterate enemies.

"We acknowledge, with the higheſt ſatisfaction, and warmeſt ſentiments of gratitude, your Majeſty's wiſdom, in endeavouring to bring the States General back to thoſe principles which they have deſerted, and in the reluctance you have ſhewn to proceed to hoſtile meaſures againſt a ſtate connected with this country by the cloſeſt ties of mutual intereſt. Your Majeſty's great moderation and forbearance ſtrongly

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aggravate their conduct, which made the present rupture indispensably necessary.

"We beg leave to assure your Majesty, that we shall, with the warmest and most dutiful zeal, give every support to those vigorous measures which your Majesty has determined to pursue. We are sensible they are founded in justice and wisdom, and are such as the honour of your Majesty's crown, and the essential interests of the nation, require."

Lord Chancellor.

The *Lord Chancellor* came from the woolsack to his place. He said, he would be obliged to put the question as moved by the noble Duke: he therefore begged to say a few words, in observation to what had fallen from the noble Lord, when he differed from the noble Duke; and if at any time he thought he saw cause not only to differ from the noble Duke, but likewise a necessity of speaking in strong terms of disapprobation, he should wish to entirely repress his sentiments, because he would be led to believe, if any improper expression came from his Grace, it had been inadvertently spoken. Guided therefore by this rule, he should ever avoid general accusations, or personal charges, direct or recriminatory; and abstain as much as possible, even in the heat of debate, from any thing which, out of that House, could not stand the test of that kind of language and personal respect, which was due from one gentleman to another. Fully persuaded of the propriety of so conducting himself, he heard with much uneasiness some charges made against the advisers of the present measure; for, though in point of form, matters of state were supposed to originate with the Sovereign personally, he was free to acknowledge that his Majesty's ministers, or advisers, were alone constitutionally responsible for the consequences.

This, however, did not make any difference as to the mode of parliamentary proceeding, in the first instance, which, he believed, uniformly declared, that when the Crown made any communication to Parliament, either from the throne, or by message, the speech or message was immediately taken into consideration, previous to the discussion of any other business. For his part, he thought the papers on the the table contained every necessary proof to justify the measure: but if they had not, the order of their Lordships' proceedings would not, in his opinion, admit of any new matter being introduced, till the message was first disposed of.

On this ground he clearly conceived that the noble Duke's intended motion amounted to a direct negative, or, as the

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noble Duke had announced it, to the poſtponing the addreſs by way of a previous queſtion. Taking it in either light, he roſe chiefly to advertiſe their Lordſhips, that it ſtruck him as ſuch, and that he ſhould conſider it in that light.

Another error, as he conceived, the noble Duke had fallen into, was, that if the Houſe agreed to the addreſs moved by the noble Viſcount, ſuch an aſſent would bind their Lordſhips, and preclude all further enquiry and diſcuſſion. He could never aſſent to this concluſion, becauſe he thought the whole buſineſs, or any part of it, was as open to reconſideration hereafter, as if no ſuch motion had been ever made or carried; and it was only on this idea that the noble Duke could take up the queſtion as he did; for certainly, if the caſe was ſuch as his Grace underſtood it to be, that their Lordſhips were to be for ever precluded by the vote of this evening, there would be good ground for deſiring further information by ſuch of their Lordſhips as ſhould think that already laid before them was not ſufficient.

The noble Duke ſeemed to lay great ſtreſs on the circumſtance, that the treaty was no more than a project. There would be ſome weight in this argument, if an opportunity had not been given to the States General to retract or diſavow it; inſtead of that, their conduct amounted nearly, if not entirely, to an avowal or approbation of its contents; they poſtponed it *ad referendum*, and by ſo doing they diſclaimd it in form, but acknowledged it in ſubſtance; for though he would allow, for argument's ſake, that they were not prepared immediately to puniſh the offender, Van Berkel, they might have ſatisfied the Britiſh Court, by reprobating it in an abſtract reſolution, or opinion, expreſſing in general terms their total diſapprobation, and declaring the impropriety or criminality of any of the ſubjects of the republic entering into a treaty with the rebellious ſubjects of another ſtate, in amity and alliance with them. After ſome further obſervations, which he explained more at large when he came to ſpeak to the queſtion, his Lordſhip having received the Duke of Richmond's motion, read it. It was in ſubſtance as follows:

"That an humble addreſs be preſented to his Majeſty, that copies of all memorials, remonſtrances, &c. which have been preſented or received to or from the States General of the United Provinces, ſince September 1778, be laid before that Houſe."

The Duke of *Richmond* then roſe, and ſaid, he had not heard a ſingle reaſon aſſigned for withholding the whole of the correſpondence

respondence between the British Cabinet and the States-General, which did not serve to fortify him in his first opinion, that it ought to be laid before that House, in order to enable their Lordships to come to a decision founded in justice and good policy. The only information their Lordships had to ground any vote upon was worse than none, because it was partial. The noble Viscount said, in argument, there was none; if that could be depended upon, his motion could carry nothing with it; it would be a mere non-entity: if productive of no good, neither could it do any harm. The noble Lord on the woolsack, for whose abilities and candour he entertained a very high respect, said, the motion implied a negative. He begged pardon for differing from the learned Lord, but he thought otherwise; for it imported no more than this, that the King with the advice of his ministers, issued the manifesto, which contained the motives of their conduct. Now, in his opinion, the fair inference was this, that the manifesto was issued upon the evidence contained in the papers, or it was not; if it was, he, for one, did not think that the evidence of the intentions of the States-General was such as to justify hostilities on our part; consequently, that other evidence was necessary, which, if not produced, as he had no expectation it would; in that case only it was, that his motion imported a negative to that made by the noble Viscount for an address.

The noble and learned Lord had insisted, that the postponing the complaint against Van Berkel *ad referendum*, and refusing to punish him, amounted to an avowal of the act with which the pensionary was charged; this was a reasoning he could never adopt. It was novel in itself, and of the first impression. It was well known, that the forms of deliberation and proceeding, and the nature of the Dutch constitution, were tedious and intricate. The latter was composed of various movements, and though he did not pretend to speak with accuracy or precision on the subject, it was more than probable, that the States-General were by no means empowered to give an explicit and precise answer on a subject of which all, or infinitely the greater part, of their constituents must have been ignorant. It was doubtful even when a power of punishment was vested in the States-General; but even if such a power was vested in them, their wonted caution and deliberate mode of proceeding fully justified their conduct; and he would appeal to every noble Lord who heard him, if there were not innumerable possible cases in which a subject of this country might offend against the law of nations, notwithstanding

withſtanding which his puniſhment, inſtead of being taken up by the ſovereign power of the ſtate, muſt be delegated to our judicial or criminal tribunals; yet he fancied it would be deemed a moſt abſurd conduct, by any power aggrieved, that a refuſal on our part to violate the laws by withholding inſtant and exemplary puniſhment ſhould be deemed an aggreſſion ſufficient to juſtify hoſtilities againſt us by the complaining party.

Another point, much inſiſted on by the noble Lords who ſupported the addreſs, was, that the project, or plan, marked No. VIII. was conſidered by them as a treaty made between the States-General of the United Provinces and the United States of America. Nothing could be more repugnant to the truth. It could never be conſidered in that light; for at moſt it was no more than a plan, or project, conditional in its frame, and, as experience has ſince proved, nugatory in its conſequences. It never was a treaty; it never was authenticated even as a project or treaty in embryo, within the knowledge and conſent of the reſpective principals: nor had ſince, ſo long as from September 1778, to this very day, been confirmed or recogniſed: ſo that if he had no other objection to the meaſure, as juſtified and explained by the manifeſto, or the meſſage in conſequence of it, that alone would be a ſufficient reaſon for him to refuſe his aſſent; for although no perſon entertained an higher perſonal reſpect for his Majeſty than he did, nor could be farther from imputing any thing improper to him, he contended, that his miniſters had made him aſſert a falſehood in that part of the manifeſto where his Majeſty is made to ſay, that the governing power in Holland *had* entered into a treaty with his Majeſty's rebellious ſubjects in America.

After endeavouring to ſhew that the above was not only a forced conſtruction, but a downright falſehood, he lamented in very warm terms, the alarming, nay, perilous ſituation of this country, which was driven into a conteſt with the three moſt formidable maritime powers of Europe; and, in all probability, if the prevailing reports were to be depended upon, there would ſhortly be added a fourth;—but Miniſters ſeemed determined to riſque all; they were grown deſperate, and by driving every thing to extremity, vainly imagined, that in the midſt of ſurrounding calamity, and national diſtreſs, their crimes or ignorance would be forgotten or overlooked. They had the modeſty to preach up unanimity, and to claim confidence, when almoſt every ſucceed-

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ing day afforded some fresh instance of their fatal ignorance and mischievous incapacity. The noble Lord over the way, after his repeated boastings, had, either through ignorance or breach of promise, suffered the dominion of the sea to be surrendered up to our rival enemies, and, by way of shewing our strength to contend with a third, had consistently avoided an encounter with even one of them single-handed.

The noble Lord in the green ribbon, while he refused to give any further information to their Lordships than the partial extracts on the table, acknowledged the existence of other information in one part of his speech, though he denied it in another. He referred their Lordships to the Dutch Gazettes. This was a language he never before heard used in Parliament, it was indeed treating their Lordships with a degree of haughtiness or contempt almost intolerable. He ventured to say, that there were some of their Lordships who never read a Dutch Gazette, and many who did, attended very little to the contents; but be that as it may, it was a species of information he never expected to hear gravely recommended to the great council of the nation by a minister in high office, and in great trust and confidence with his Sovereign,—to peruse the Dutch Gazettes as the only document necessary to enable them to advise their Sovereign, when called upon by him, at a most critical and important period. The noble Viscount referred their Lordships to a source of information to which, it was probable, he never resorted himself; for he presumed he was like his uncle, who *never* read a news-paper —*no, never!*—This contemptuous treatment was difficult to be borne. He knew it was in vain to oppose it, or seek redress. The people were infatuated; the nation was led blindfolded; and where any opposition or stand was made against those pernicious and destructive measures, corruption came in and swept every thing before it, and, by its irresistible effects, set truth and justice at defiance.

The noble Lord in the green ribbon had dealt in the marvellous as well as the improbable; he was bold in figure, and extravagant in metaphor; he had, indeed, used one somewhat out of the common road, which he should not have been much surprised to hear from the mouth of his brother Secretary [meaning Lord Hillsborough, and alluding to his being an Irishman]; he had recommended vigorous measures, and predicted their good effects, one of which was, that they would be the means "*of stunning the Hollanders into their senses.*" It was, he confessed, a curious method of bringing

bringing people to their recollection, by first depriving them of all sense and memory; but he would not quarrel with the simile, though he doubted the justice of its application. It was evident, however, that this language was calculated to answer certain temporary purposes, to delude the people with false hopes, and prevent them from reflecting seriously, and of directing their attention to the reality of their situation.

His Grace spoke to a great variety of miscellaneous matter, which afterwards underwent a more full and detailed discussion, and gave several intimations, in the course of his speech, that as he perceived all endeavours to serve this country, which he looked upon as devoted, were in vain, he was determined for one to discontinue henceforward a mortifying and unavailing opposition.

Earl Bathurst.

Earl *Bathurst* rose and said, he was much astonished how any noble Lord could entertain the least doubt of the secret intentions of the States-General, or, being satisfied of those intentions, could hesitate even for a moment about coming to a decision. It was very unnecessary, he believed, to endeavour to demonstrate what must be acquiesced in as soon as mentioned, that the States-General either did or did not know of the intrigues of Van Berkel. If they were acquainted with the transaction relative to the private treaty executed between the pensionary and Mr. Lee, and had not taken the necessary steps to undeceive our rebellious subjects, by passing a censure upon their own subjects, who had thus traiterously taken upon them to confederate, not only for themselves, but the governing powers of the country, or state; or being totally ignorant of what passes between the contracting parties, till informed by the British minister in the month of December last, when they postponed, *ad referendum*, the consideration of the complaint stated by said minister; their conduct in his opinion, in either event, amounted to a justification of what had been secretly approved of, or connived at by them, or what being transacted without their knowledge, as soon as it was made public, met with their hearty approbation.

His Lordship observed, that he had heard now with much indignation, a repetition of the same language which had so often given such just cause of offence to every real friend to his country; and which in his soul he believed, besides the particular personal offence it gave those whose conduct and sentiments were so unjustly and indecently traduced, had been productive of the worst consequences in respect of fo-

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reign powers. Our counsels were described to be weak or wicked; our national state of defence totally inadequate to operations offensive or defensive; our finances exhausted, and, in short, every thing was urged that might, by its impression or tendency, invite the attacks of our declared enemies, shake or render our alliances of none effect, or create a disregard and contempt in those states which were deemed merely neutral.

When his Majesty, by the advice of his ministers, and approbation of his two Houses of Parliament, had adopted any measures in support of the dignity of his crown, the rights of Parliament, and the preservation of his kingdoms, those measures were arraigned in the most indecent terms: and when every other means of obstructing and defeating them failed, then it was the language of some noble Lords to predict national ruin, and to affirm that it was effected by the influence of corruption, or acts of ministerial imposition. This was what he would never endure, or pass by in silence, as long as he should have the honour of a seat in that House; it being evidently the language of falsehood and disappointed ambition; it could only originate in the worst motives, and deserved the resentment of the public at large, as well as their Lordships, every one of whom, who continued to support the measures of government, being involved in the general accusation. Was it possible to sit in that House, day after day, without feeling the strongest emotions of well-founded indignation.—To hear the conduct, of not only the noble Lords to whom his Majesty had entrusted the direction of his affairs basely and unjustly vilified, and their characters scandalously and indecently traduced;—charged with being wicked at one time, and incapable at another, or both, according as it corresponded with the views, or answered the purposes of their accusers;—as having entered into a conspiracy against the liberties of their country, and leagued for its destruction, but even every one of their Lordships who supported the measures ministers recommended.—To state those accusations was sufficient, for they contained in themselves their own refutation, and that they were no less malicious than ill founded. He had for a long series of years served his sovereign in several capacities, and he could lay his hand on his heart, and with truth affirm, that he always acted for the good of his country, to the best of his abilities: and that there was nothing the crown had to bestow could induce him to give a vote contrary to his conscience, or declare against what seemed to him to be the real interest of his country. If he

was not very opulent, he had sufficiently to put him above the poor temptations of place and emolument; and he could in his conſcience add, that he believed there was not a ſingle noble Lord who heard him, and that had ſupported the meaſures ſo indecently aſſerted to have been carried through by the mere force of corruption, who did not act from motives equally honourable and conſcientious with himſelf.

But it was plain whence all this aroſe; it aroſe from a wicked ambition; a luſt of power and dominion; a thirſt after the emoluments of office. It ſprung from corruption, and the worſt ſpecies of corruption, becauſe it was incurable—"a corruption of the heart." Meaſures were to be oppoſed, becauſe they were ſaid to be the King's meaſures. Miniſters were to be traduced, becauſe they were miniſters: they were vilified and envied on account of their ſituation. Oppoſition proceeded upon hopes formed of compelling miniſters to reſign; but what was worſe than all,—than even perſonal perſecution, or public accuſation, the deareſt intereſts of the country were ſacrificed to effect the completion of thoſe pernicious ſchemes. He truſted however, that the good ſenſe of the nation had learned to trace the motives of ſuch a conduct to their ſource; to ſee that it flowed from party rage, which is ever known to be the reſult of political deſpair and factious diſappointment.

Duke of Richmond

The Duke of *Richmond* inſtantly roſe, and obſerved, that there was no great difficulty in making a general and particular application of what had juſt fallen from the noble Earl. It was directed againſt thoſe who had, from the commencement of the preſent wicked, unnatural, and ruinous war with America, oppoſed the meaſures which gave it birth, and continued to the preſent minute to oppoſe and reprobate it in every ſtage of its fatal progreſs. It was particular, as perſonally applying to himſelf, for having imputed the perſevering in a war, equally impolitic and unjuſt, to the power and irreſiſtible ifluence of corruption. He aſſured the noble Earl, with all his warmth and eloquence, he had not convinced him of the contrary in either reſpect. He was ſtill ſatisfied, that the war, if continued to be proſecuted againſt America, muſt inevitably terminate in the deſtruction of this country; and he was equally convinced, though he was far from ſtating it as a matter applying indiſcriminately to all, or perhaps to any very conſiderable part of thoſe who countenanced the preſent ruinous meaſures, that between two parties, thinking indifferently and impartiality on the ſame ſubject, the balance had been weighed down by the means of corruption.

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The noble Lord, with all those loud and warm professions of the disinterested motives on which he had acted since he became a servant of the crown, and that energetic eulogium pronounced by himself on his own public virtue, laid down one general proposition; "that opposition to the measures of government are always founded in party and factious motives; that failing to oust the administration for the time being, begets rage and disappointment; and these again beget personal enmity, malice, and ill-will." He was ready to take his Lordship's word for every syllable of the doctrine so far as it applied to himself. There was a period, and perhaps a long and the most valuable period of his Lordship's life, when he was known to be in strong opposition to the measures of the Court. His Lordship, it might be fairly presumed, now spoke as he once felt; he spoke from long experience. The struggle was tedious and mortifying, full of disappointment, and concluded with despair. No man, therefore, was a better judge of the various operations of the human mind under such circumstances; and so far as he retained a recollection of what passed in his own—it was scarcely to be doubted; it was fair to conclude, that a wicked, corroding ambition, whetted and encreased by unavailing attempts, and a state of political despair, were, in his Lordship's contemplation, ever productive of malice and personal enmity, and "that worst species of corruption, a corrupt heart;"—but the noble Earl is a Tory; he was then in opposition to the Whigs; whoever opposed his friends, whether in or out of place, must have acted from factious motives and a corrupt heart.

The noble Lord had exerted his great talents in endeavouring to prove the folly and improbability of supposing that ministers would withhold from Parliament, or ever had, such information as was necessary for the full consideration of Parliament, when they came to decide upon any great or important question. This, he perceived, had been urged in favour of the present measure, as well as every other preceding one since the commencement of the present war. Now let their Lordships attend only for a minute to the case as it really stood within their Lordships' own knowledge, and derived from evidence within that House. Previous to the commencement of hostilities in America, the noble Lords who sat on that side of the House warned Ministers of the consequences which were likely to ensue. After hostilities had taken place, and that upon the assurances of a noble Lord at the table (Lord Sandwich) that the Americans were cowards and poltrons, and resembled an herd of sheep, who, in proportion

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portion as they were numerous, were drove with the greater facility; when it was fatally discovered, that they were not so totally bereft of native courage, nor the means of resistance, as had been described by the noble Earl alluded to; did not those persons who disapproved of the war, make the most earnest and repeated efforts to substitute treaty for the sword, and instead of coercion, measures of blood and slaughter, and unconditional submission, recommend conciliation, and a security for and recognition of the political rights of our American subjects? When over-ruled and borne down by numbers in their repeated efforts to this effect, did not they continue to dissuade them from the mad pursuit, by predicting the interference of France? and when that event had taken place, had not the same men recourse to the same exhortatory persuasives in respect of Spain: and so on to the very instant he was speaking? Did not all their predictions turn out exactly as they were foretold, no matter what motives those predictions might have originated from? and was it not thence clear, that opposition were perfectly right in respect of the policy of the war? As to the other point, so strongly urged by the noble Earl, that whether ministers were right or wrong, they acted upon the most pure and honest motives, and that Parliament, as well as the nation, had approved of their conduct;——here he begged leave to differ from the noble Earl, as to the conclusion which he drew; for besides being convinced that corruption strongly operated in procuring a Parliamentary sanction to the several measures he had pointed out, her was authorized to say, that other aids were called in in order to the giving success to a favourite system—the aids of delusion, falsehood, imposition, and ministerial seduction. He could point, where he to consult his memory, innumerable instances of the kind during the progress of the war. He would just advert to one, however, which could not be doubted of, since it was acknowledged by a noble Lord in his place in that House, who presides at the head of one of the first departments in the state (Lord Sandwich) who, when the mad project of subduing America by force of arms was first conceived, instead of augmenting our naval force, at the commencement of a war, intended to be chiefly a maritime one, reduced the number of seamen from 20,000 to 16,000; and when afterwards reminded, that miscarriages and disappointments chiefly arose from our having an inadequate naval force, his Lordship did not controvert the fact, but had the confidence to rise in the same House, and in the same place, and acknowledge that he was conscious that the force

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voted was inadequate; but that he foresaw, if he had proposed what appeared to him to be an adequate force, it might probably have created an alarm in Parliament and the nation, and have tended to defeat the measures which had been previously agreed upon and settled by the King's ministers.

So far, therefore, from administration having acted upon the purest motives, or opposition upon the worst, it was evident, that the former had not only employed the general weight and influence, which is the established support or appendage of government, but had further strengthened their plans, and promoted this great object of their wishes, by trick, imposition, and deceit; while, on the other hand, though the motives of opposition might be called in question, their political foresight, and the truth of their repeated predictions, must stand uncontroverted and unimpeached; and in no one instance more strikingly so, than that one delusion begot a situation which made another necessary, till at length our affairs became so embroiled and pregnant with difficulties, that many who had perceived their error, found themselves brought into a predicament, in which it appeared to them more dangerous and fatal to recede than to push forward, trusting every thing to future events and speculative contingencies.

The noble Earl said, that all opposition to public measures were composed of the same ingredients, and that a love of power, &c. would ever operate to produce them, be the measures proposed ever so wise, salutary, and necessary. This he affirmed to be contrary to common experience and public evidence. He was ready to grant, that mixed governments gave birth to contrariety of sentiment and opinion, and of course, that the best and wisest measures were liable to be questioned and opposed; but he denied the inference the noble Lord had endeavoured to draw from the general observation. All administrations did not create the same degree of opposition, nor were they deserving of it; nor would all administrations, if compared at a subsequent period, stand the test of comparison, so as to be reduced to the same standard. He came into Parliament very young, but he was old enough to have a seat in that House through the whole of the glorious and successful administration of the Earl of Chatham (then Mr. Pitt); and he well remembered, though he believed every thing done by that celebrated statesman might not be universally approved of, that there was little or no opposition made in Parliament to his administration,

ſo long as he continued in office. He, for one, heartily concurred in ſuch of his meaſures as came under deliberation when he was preſent; and yet he could ſay, that he had no intimacy nor political connexion whatever with his Lordſhip. He had ſcarcely a perſonal acquaintance with him, nor was he ever under his roof but once, and that merely upon a matter of buſineſs. He would not now enter into any comparative view with the preſent adminiſtration and that conducted by that able and honeſt ſtateſman. He would obſerve, however, that the glories of that adminiſtration were now all tarniſhed, or their effects no longer felt; and that before the very monument deſigned to perpetuate them was finiſhed.

His Grace, early in his ſpeech, in reply to Earl Bathurſt, took notice, that what he had ſaid relative to corruption, though he had literally meant and applied it to even the majority of that Houſe, he did not expect that his Lordſhip would have taken it up with ſo much ſeverity; for as it was the doctrine of the noble Earl and his friends, that all government muſt be carried on by force or corruption, and as he underſtood it was not the profeſſed deſign of the preſent ſet of men in power to introduce a government by force, by firſt ſuperſeding the forms of the conſtitution, it was natural to conclude, that they had embraced the other part of the alternative, that of carrying on the buſineſs of government through the influence of corruption.

Earl of Cheſterfield.

The Earl of *Cheſterfield* roſe to the queſtion as ſoon as the Duke of Richmond ſat down, and arraigned, in very ſevere terms, the conduct of certain Lords in that Houſe, who, while they ſo ſtrenuouſly contended for the right of free diſcuſſion and opinion in their own caſe, denied it to their opponents. Whoever had the misfortune to differ from them, was inſtantly pronounced to be weak, ignorant, or incapable: and not even contented with denying them all ability, they added to the reſt charges of the moſt criminal and diſhonourable nature; if it was not weakneſs, it was corruption; ſo that it was impoſſible to eſcape from the obloquy meant to be thrown upon them in any event.

This, ſurely, was a conduct on the part of thoſe who purſued it equally unjuſt and unbecoming, and ſtruck at the very eſſence of parliamentary independence; it was arrogant, to ſay no worſe, in one event, and indecent in the other; and if charges of that kind were to be permitted, moſt certainly the party thus accuſed were every way entitled and

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justified in recriminating: if noble Lords of a certain description thought fit to charge folly and corruption on their opponents, those traduced were warranted to retort the accusation back again; and presume, that none could make such unjust charges, had not conviction arose from internal evidence arising in their own breasts.

As to the measure communicated by his Majesty to the House, he was of opinion, that it was dictated by political necessity, which left no choice to the King and his ministers. Holland, through the whole of their conduct, since the commencement of the rebellion in America, manifested a most inimical and treacherous disposition towards this country; which was evident, as well by the protection and countenance they shewed to the rebel pirate *Paul Jones*, while he lay in the Texel, as by the late conduct of one of their admirals at St. Eustatia, who not only saluted, or returned the salute of the rebel vessels, but even confiscated the property of our subjects, who had captured some of the rebel ship and property, and brought them into that island. He was perfectly persuaded, for one, that Holland only waited to declare publicly, what she had been long meditating, namely, till her navy was in a condition to act offensively, and to afford protection to their commerce and extensive dominions; or, as occasion might offer, of acting hostilely against us in confederacy with France and Spain.

Such being the conduct and apparent ultimate views of Holland, he was firmly persuaded, that the measure now under consideration was the only one which could be adopted, consistent with national dignity, and the security and preservation of the state; and if fate should determine that we must fall, which in one event would most certainly be the case, he could not for a moment postpone the decision; but rather prefer to fall with honour, than survive with infamy and disgrace.

Duke of Chandos.

The Duke of *Chandos*, after pronouncing a very high eulogium on the public and private virtues of his Majesty, and his good opinion of the laudable intentions of his ministers, though they had not been always attended with the wished-for success, said, he most heartily approved of the spirit and vigour which manifestly dictated the present measure. He made no doubt but it would be productive of more than one salutary effect. Besides disarming a pretended friend, but concealed enemy, from carrying their faithless and destructive schemes into execution, it would convince our open foes of the

the fixed determination and magnanimity of this country, though furrounded by an hoft of foes, and contending for her rightful dominion over fo great a body of her own unnatural a d rebellious fubjects.

He acknowledged that our fituation was critical and perilous, and that opportunities might have been loft; but it was too late to take a retrofpect, and nothing now remained to be done, but to call forth the whole refources and ftrength of the country, and employ them effectually againft our enemies. It was in vain to contemplate the magnitude of the danger for any other purpofe, but as it might fuggeft the means of furmounting it; and whether the treaty or project negotiated and figned by Van Berkel and the Congrefs Delegate had been perfected, or formally approved of by the States General, was, in his apprehenfion, at this ftage of the bufinefs, of very little importance. It was evident in every one point of view the matter could be impartially and rationally confidered, that their conduct was fuch thoughout as fully juftified the meafure which minifters had advifed their fovereign to adopt. Upon this ground he muft of courfe give his negative to the motion made by the noble Duke, and his hearty affirmative to the addrefs moved in anfwer to his Majefty's meffage.

Marq. of Rockingham.

The Marquis of *Rockingham* expreffed his aftonifhment at the novel language which had prevailed that day on the oppofite benches. The whole minifterial fyftem of politics had been changed; opinion, fufpicion, and vague and uncertain appearances had been fubftituted for facts, and motives urged or approved of for precipitating the nation into a war, which, he believed, never before influenced the decifions of a council of ftate in a civilized country. He was not, for one, much furprifed at any abfurdity which may have prevailed in his Majefty's councils, fo long as the prefent adminiftration retained their guidance and direction. His aftonifhment arofe from a very different caufe; from the fudden change of conduct in the fame men, on the fame fubject, and that in fo fhort a fpace of time.

He remembered, a very few years fince, before France had publicly declared, when there were the moft inequivocal proofs that fhe was fecretly affifting America; that the conftant anfwer made by the prefent minifters was, "it cannot be, for we continue to receive the moft fatisfactory affurances of not only their intention not to interfere in the difpute with America, or affift our American fubjects in arms

againft

against us, but of friendship and good will." Nay, after the French cabinet began in part to develope their future intentions, by permitting their subjects to open a kind of commercial traffic, ministers continued to hold the same language; and finally, when the noble Lord in the green ribbon, then ambassador at the French court, sent home in his public capacity information of an actual treaty having been signed and solemnly ratified by the French king and the United States of America, ministers still affected to disbelieve it. They refused to give it the least degree of credit, though he was persuaded, if they were really serious, they must have been the only persons in Great Britain who entertained a single doubt of its existence: but that was not all; the treaty had been made for six weeks; and yet, in the interim, no step was taken in consequence; nor did ministers own that they knew any thing of the matter, though daily reminded and goaded in both Houses of Parliament, till the very day that the Count de Noailles, the French minister, delivered the rescript to a noble Viscount (Weymouth) then Secretary of State.

Here was the contrasted conduct of ministers upon similar occasions; not that they could be justly deemed so; for one was their conduct towards a natural enemy and rival power, the other towards an ancient ally; neither was it similar in other respects, for though ministers had the most direct proofs, not of the intentions of what France meant to do, but what she had already actually done, no notice was taken of it; whereas ministers, not having a tittle of proof of any kind, on the present occasion, of what Holland had already done, or meant to do, but waited in the former instance till France declared, by the mouth of her ambassador, the steps she had taken; and now refused the States-General a few days to consider, as it might be fairly presumed, of the proper mode of giving the satisfaction desired, and of the means of doing it effectually.

He recollected another instance of the conduct of the present ministry, which corresponded with that towards France, and was directly contrary to the spirit and principle of the present measure. The noble Lord who now presides at the Admiralty Board (Lord Sandwich) was not at the time in the same office, but he nevertheless approved of it, in another capacity (Secretary of State) he meant the conduct of Spain in respect of Falkland's Island, when the captain of a Spanish frigate had the unheard-of insolence to take off the rud-

der of a British man of war; so atrocious an insult, as in the opinion of a celebrated naval officer, since deceased (Sir Charles Saunders) as to fully justify this country in attacking the ports, harbours, and naval arsenals of Spain; and, if it could be effected, of even laying Madrid in ashes. Was not this an aggression of the highest and most aggravated nature? and yet, how was it possible to patiently listen to the very same men, and their friends, who tamely put up with such an outrage upon the dignity of the nation, and the honour of the British flag, now recommending to plunge their country into a war with a power allied by treaty, and connected by the dearest reciprocity of interest, and mutual preservation and support, at a time too, when we are contending with the united force of the House of Bourbon, and one third of our own subjects armed and eventually confederated, for our total ruin, if not annihilation, as a sovereign and independent state.

There was another circumstance, if possible, to heighten the folly, and which aggravated the impolicy of the act, that the conduct of the States General was condemned in the lump, and sentence passed upon them without hearing what they had to urge in point of fact, or declare in point of intention. How could we pronounce, for a certainty, that the States-General had the least intimation of the treaty which ministers had so confidently laid at their door? Was it not much more probable that they had not, as after a period of almost two years and an half, for aught that appeared, or was even pretended, not a single vestige of it could be traced. Was it not, if probability were to govern, more likely that the parties who devised and framed this project, seeing no prospect of giving it effect, had cautiously concealed it; or even supposing the worst, that the governing power in Holland might have come to the knowledge of such a treaty, they had suppressed it in embryo, and passed the affair over in silence, from politic and prudential motives? Be this, however, as it may, taking the affair in any light, but as a treaty approved and ratified by the States General of the Seven United Provinces, he was clearly of opinion that the war was impolitic, and, he was persuaded, unjust. Such being his sentiments, he should be for postponing the address, and giving his affirmative for the motion made by his noble friend, in order to satisfy their Lordships of the injustice of a measure, which might in its consequences involve such vast numbers of innocent persons in the loss of their properties and their lives.

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The Earl of *Coventry* confirmed ſeveral obſervations made by the noble Lord who ſpoke laſt. He attributed all our public misfortunes to the weak or miſtaken policy in the firſt inſtance, that of attempting to make laws for governing America againſt their own conſent; endeavouring to give eff ct to thoſe laws by means of coercion; and laſtly, to the madneſs of expecting to ſubdue the vaſt continent of America by force of arms. This unhappy, this fatal war, was pregnant with misfortune, and, if not ſpeedily put an end to, he made no doubt would ſtill continue to bring with it daily embarraſſments. He never, from the earlieſt commencement of this buſineſs, entertained a ſecond opinion on the ſubject. America, if retained at all, he thought muſt be retained merely upon the title of popular conſent, upon mutual confidence and affection, and the government of the parent ſtate be recognized by the only ground on which government can reſt with ſafety, that is, general approbation. However prejudice might warp, and zeal miſlead, it muſt be evident to any perſon who could diveſt himſelf a moment of them, that America could never continue under the dominion of the Britiſh government a moment longer than ſentiment, affection, and political intereſt bound her; and even if our dominion could be maintained by force, it would be little leſs deſtructive to this country than actual ſeparation; becauſe it would be but of a temporary continuance, and muſt at no very diſtant period give way to the real wiſhes and power of the people.

Earl of Coventry.

He ſhould not go at large into the queſtion, further than juſt to obſerve, conformably to the meaſure propoſed to their Lordſhips, and to the laws and uſages acknowledged and eſtabliſhed by ſovereign and independent ſtates, that he doubted much of the juſtice of the war unleſs miniſters had more full and relative information, and would conſent to communicate it to their Lordſhips; and he was much more confirmed in his opinion that it might be ſo, when he coupled the policy with the juſtice of the meaſure. He would not retribute on thoſe perſons who ſuppoſed, that every noble Lord on the ſide of the Houſe he ſat, oppoſed the meaſures of the preſent ſet of miniſters from improper motives. He hoped his conduct was ſuch, though his oppoſition had been uniform, as to exempt him from conſciouſly applying any part of the imputation to himſelf; but whatever interpretation might be put on his conduct, when he expreſſed his diſapprobation of the preſent meaſure, it was to him a matter of great indifference; he aſſured the noble Lords that he trembled for the conſequences

when he confidered the enormous amount of our debt, the immenfity of our taxes, their extreme preffure upon the lower orders and laborious part of the community, and the further burthens which muft continue to increafe and accumulate, fo long as the war fhould laft.

He had lately paffed feveral weeks in the country, and had not been quite inattentive to the ftate of the clafs of men whom he mentioned; and it was with grief he beheld the fatal effects of the prefent ruinous and deftructive war. The county in which he refided [Worcefter] was a great manufacturing county; and it was almoft incredible to believe what vaft numbers were out of employment, in a ftarving condition, or obliged to apply to the parifh for relief. The evil was not confined to the lower order of the people; it had reached of courfe the farmer and manufacturer, and at length made its way to the land owner and country gentleman. Land had decreafed nearly one half in value fince the prefent war; new taxes were laid on each fucceffive year in an inverfe proportion; and though the latter defcription were ftill able to keep up appearances, it was only by difcontinuing many of thofe expences which arofe from their fituation and rank in life; but when with a debt of almoft two hundred millions, and an annual intereft payable on it of feven millions, fourteen or fifteen millions new debt was to be incurred this year, and fo in proportion, fo long as the war fhould continue—the idea was indeed terrible! He therefore was juftified in concluding, when further taxes came to be laid, and ftill further provifions for debts to be hereafter incurred were added, that the ruin which fuch an accumulation of burthen would produce would become univerfal: and that want and diftrefs, which had hitherto only affected the lower clafs of people, would foon extend itfelf to all ranks and degrees; for the time was fwift approaching, and muft inevitably take place, when the lands of England would be mortgaged to the public creditors for full one half of their real value!

He had dwelt upon thofe circumftances in order to fhew the ftrong motives minifters had to act with the greateft caution and circumfpection in refpect to the prefent meafure; and how much it was their duty, when deciding on the juftice of the war, to take likewife into confideration the expedency of it—to weigh the provocation againft the confequences, and make an eftimate from every motive which the internal ftate of the country, as well as our fituation in refpect of our foreign enemies might fuggeft, and fee whether a line might not be chalked out between a tame acquiefcence, and an act

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of political despair, which appeared to him, the instant he was speaking, to lead to greater and more fatal evils than perhaps were ever before experienced by any other nation.

He most sincerely believed, that it was not merely the incapacity of ministers, or any sinister motives, which could have induced them to take this last precipitate step. It was directly repugnant to the established system on which they had hitherto acted towards foreign powers. It was in his understanding an act of political desperation, or, like the undone gamester, hazarding all upon a single dye: he meant, unless some favourable circumstances were held back, which from prudence or other reasons it might not be prudent to reveal.

Uninformed of the motives on which ministers acted, he could only judge from appearances, and upon that evidence he was free to say, that they stood in a great measure exculpated in his eyes, for he could only consider them as instruments acting in a state of infatuation, under the influence or decree of Divine Providence, in order to scourge a devoted land; but under whatever influence they might have acted, he sincerely wished, that those who were supposed not to be under any such impulse, would call for the information necessary to satisfy the House of the fact stated in the message, that the manifesto arose out of necessity; and that to three most formidable and powerful enemies, we had been unfortunately compelled to call a fourth against us into the field.

Earl of Fauconberg.

The Earl of *Fauconberg* complained much of the language which was predominant in one part of that House, and which imputed corrupt motives indiscriminately to such of their Lordships as supported the measures of government. It was a charge easily made, and with difficulty refuted. In his opinion, the contrary approached nearer the truth; and that those who opposed government, opposed it with a view to get into place. At all events, he could answer, so far as the accusation might be supposed to affect himself, that he was above being bribed or corrupted. His fortune was ample, and put him out of the power of temptation; and he could safely affirm, that it was not the emoluments arising from the places which he help [a lord of the bed-chamber and colonel of a new raised regiment] that induced him to accept of them, but the honour of serving his Sovereign, whose person he loved, and whose virtues he revered. One of the trusts he held was of a military nature, and, he believed, those who knew any thing of him, or about that transaction, could not imagine that he was induced to accept of it from motives of profit or

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with a view of emolument. He assured their Lordships, that his motives originated from another source. When France, allied with our rebellious subjects, threatened an invasion, he thought that his loyalty to his Prince and love of his country called upon him to offer his services. He did offer them, and they were graciously accepted; and he valued his present situation much more on account of the affection he bore his Majesty, than from any advantage he could possibly derive from it. He protested sincerely, for one, if it could be so settled in general, that he would very chearfully surrender what he received to the uses of the state. As he was disposed to believe, that much of the opposition made to public measures, arose more against the proposers of them, on account of the emoluments which they enjoyed, than the measures themselves, he would gladly resign what he enjoyed to the clamorous and discontented, in order to purchase unanimity and concord.

He thought it became the duty of every loyal subject and friend to his country to stand forth at this alarming crisis; against both our foreign and domestic enemies; against all new-fangled opinions relative to ideal schemes of political reformation, which tended merely to create and nourish discontents, innovations which, if permitted or encouraged, would end, he feared, in national distraction and public confusion.

Earl of Shelburne

Earl of *Shelburne* (Lord Wycombe) rose and said he arrived in town but the night before, and nothing but the immense magnitude of the question under their Lordships' consideration could have induced him to come down to the House that day. He had long determined to absent himself from his attendence there, because he was convinced it was out of his power to render his country any essential service, as public affairs now stood, and as government was conducted. If his attendance that day had not struck him, as a superior call of duty, which could not on motives of honour and conscience be dispensed with; he assured their Lordships, had he staid away, he would have been furnished with a very cogent apology, namely, his having been attacked in the country, with a violent illness; and he feared that in the course of the observations he was about to make, that circumstance would prevent him from giving the degree of attention which a subject of so much importance necessarily demanded.

He had, on former occasions, at several times, particularly towards the conclusion of the last session, resolved to give their Lordships and himself no further trouble respecting the

misconduct

misconduct of ministers, and the fatal effects of the measures which they had from time to time recommended to that House; he had hitherto faithfully kept his word, and would hereafter continue as faithfully to adhere to it. But a Dutch war! a war with Holland! as soon as it reached his ears, filled him with amazement.—What, a war with Holland! with our ancient allies and natural friends! whose efforts and connections, for more than a century, have proved the chief security of both states! their surest and best safeguard? A war between those powers, who, while united, not only supported their own independence, but the liberty and independence of all Europe—the great preservers of the balance of power: A rupture between two states thus circumstanced, and thus allied he could hardly give credit to; and when he did, it only served to fill his breast with a mixture of grief and astonishment that benumbed all the faculties of his mind, and in its first effects, left no other impression there but wonder and and amazement!

He assured their Lordships, that he did not now rise to condemn ministers, or to point out the folly and incapacity which marked so strongly every single feature of their public conduct since our unhappy rupture with America. He could have no personal ill will to them; on the contrary, there were some among them for whom he entertained great respect; neither did he wish, as had been mentioned by a noble Earl, (Bathurst) early in the debate, and by more than one noble Lord in the course of it, to succeed to any one of their situations. The responsibility and labour annexed to such situations rendered a succession neither desirable nor enviable, in his apprehension, at any time; but at such a period as the present, that man's mind must be strangely framed indeed, who, upon any pretence or temptation, could be induced to accept of any high or responsible office, when he must be convinced, that the happiest union of talents, integrity, and popular confidence, aided by the utmost vigour of mind and laborious industry, had not, even in imagination, any thing on which it could securely rest; and when the most sanguine hopes and warmest expectations must build their proposed success more upon chance and a succession of fortunate events, than from a consciousness of real abilities, strengthened by national co-operation and united councils. But his wish to succeed to any of the present ministers was out of the question. Ministers knew it, and of course they would not deny

deny it; they need not be told, that nothing could tempt him into so embarrassing and perplexing a situation.

A Dutch War, he confessed, called him once more, and he believed for the last time, to that House; and while he was full of the strongest emotions that he ever felt upon any occasion of the kind, he found himself almost totally unable to proceed. The idea was immense, and the subject much beyond his grasp; he could take a view of this or that particular part of it; but when the subject presented itself together, it filled his mind in the same manner that he felt when he contemplated the national debt. He, or any of their Lordships, could easily measure in their minds a few thousand pounds; more might be added, and computation might be pushed to a certain length; but when it is known that the national debt was swiftly approaching to the enormous sum of two hundred millions, the mind became bewildered and clouded; even the powers of imagination failed; it resembled infinity of space, or infinity of duration, which only serves to produce doubt and uncertainty; so it was respecting the Dutch war; reflection was at an end; investigation had nothing to examine. The more attentively it was considered, the less it was understood: and when the probable consequences it would produce presented themselves, it led into an ocean of doubt, alarm, apprehension, and mental distraction.

His Lordship, in a general reply to what had been thrown out respecting party, said, that he wished not to be included in any such distinction. He neither was bred or trained up in party principles, nor had ever listed in any. He carefully avoided it, because he knew it would answer no good end; and experience had convinced him that he acted right. But it was ridiculous to suppose that there was any such thing as party now existing.—There was not—There were numbers of persons in both Houses in opposition; but the result did not constitute a party. — Opposition was composed of a great number of petty squads of individuals; but their conduct, if it aimed at any thing, had defeated the very purposes of an effectual opposition; and whenever they seemed to unite in opinion upon any important question, their attempts had always, and ever would, he ventured to predict, miscarry. It was in vain to oppose the measures of administration; the Crown had gained an irresistible influence, which bore down every thing before it; the people and Parliament had acquiesced, or, if any effort was made to

ſtem it, it only ſerved to prove the folly of the attempt and that every ſtruggle anſwered no other purpoſe but to augment that influence it was ſet on foot to correct and preſcribe limits to; the conſequence of which was, on the part of thoſe who ſtood forth in oppoſition to government, that they were deemed criminal becauſe they proved unſucceſsful; they were publicly abuſed, and privately traduced; and even were diſappointed of that ſpecies of conſolation which every man, more or leſs, looks for, when he contends for the rights and welfare of his fellow-citizens, and by being held up by their opponents as the ſecret or avowed enemies of their country, and the factious and intereſted oppoſers of the King and his meaſures, had the additional mortification of being rendered, in ſome meaſure, unpopular. His full perſuaſion that this was the effect of the ineffectual ſtruggle he had been for many years engaged in, was, he ſincerely declared, his ſole reaſon for abſenting himſelf from his duty in that Houſe. He had made up his mind the laſt day he had the honour of addreſſing their Lordſhips on the ſubject; nor had he any reaſon ſince to depart from that reſolution. He truſted that his friends would think it a ſufficient one; if it ſhould not appear to them in that light, he would have the conſolation, that it brought the moſt full and perfect conviction home to his own mind.

The conduct which he had preſcribed to himſelf this day, was by no means a departure from the rule abovementioned. He attended now as a Privy Counſellor in the great hereditary council of the nation, to offer advice to his Sovereign, at a moment of national peril and diſtreſs. He had conſulted no perſon, and was acquanted with the ſentiments of only a very few. He knew his own, however, and would declare them fairly, openly, and without diſguiſe, or without the leaſt regard to thoſe of any other man. Before he ventured into detail, or the proofs on which he had founded his opinion, the general reſult of what he had learned, or could diſcover, was, that we ſhould inſtantly ſuppreſs the manifeſto, and endeavour immediately to return once more into a ſtate of amity and alliance with the republic of Holland.

His Lordſhip then proceeded to diſcuſs the queſtion on the grounds of juſtice and political expediency. In reſpect to the former, he contended that the conduct of adminiſtration was perhaps the moſt extraordinary that ever entered into the mind of man. The treaty ſigned by the penſionary Van

Berkel was no more than a project to be hereafter entered into, and was besides conditional, or contingent. It was only to have effect upon a future event: namely, if the confederated States of America should hereafter be declared independent by the powers of Europe; but though it had been authenticated and confirmed by the States General of the United Provinces, it could not in any light be considered as an aggression, at least such an aggression as would justify the commencement of hostilities on our part. There were besides some other circumstances which rendered the paper much less offensive, for it was after Parliament had offered terms very little short of American independency; and when the separate propositions of one of the American Commissioners were added (Governor Johnstone) which propositions, though denied in argument, or explained away, were never disowned by ministers in direct terms, the whole amounted, with what Parliament had offered, to a state little short of absolute independence, so far as the sovereignty of the British legislature was concerned. But the main and only true question on which the measure of hostility was to rest, or be supported, was this: Was the treaty signed by Van Berkel and Mr. Lee, the Congress delegate, binding on the States General, and America, or either? If it was not, then he was authorised to say, that the treaty was not an act for which the governing power in Holland was strictly, generally, or equitably responsible.

Another consideration he begged leave to press upon their Lordships' mind, which he hoped would meet with that degree of attention it seemed to him to merit. He would suppose the utmost that was stated; he would suppose that the States General knew of the treaty even before the transaction was communicated by Sir Joseph Yorke at the Hague; and still further, that the postponing the complaint *ad referendum*, was either a denial of satisfaction, or something bordering upon it. This he would take to be the utmost point ministers could stretch, what they had been pleased to make his Majesty affirt was an aggression on the part of Holland. He would not suppose it; he would take it for granted, because it was so stated in the manifesto on the table, the only authority upon which their Lordships were desired to vote the address. Were, then, ministers as ignorant of the constitution of Holland as they were of every thing else which related to foreign affairs? Were they sure that it was in the power of the States General to give redress, much less punish the supposed delinquents? Were they so uninformed as not

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to know that the States General could not at all take cognizance of the affair, without consult and deliberation? It seems they were. He would tell them, imperfectly acquainted as he was with the constitution of the Dutch republic, that it was not competent for the States General, in their deliberative capacity, to exercise an act of sovereign power over any one of the other provinces, much less to overturn their municipal rights, or violate the laws. He believed the fact was notoriously known; at least history and experience, in a great variety of instances, confirmed it. It was notorious that some of the subjects of the republic sold powder and military stores to the French during the siege of Bergen-op-zoom, the celebrated siege in the war before the last (a town that was the acknowledged key of their own dominions) and thereby enabled the enemy to take it: it was no less so that they were frequently detected in the same illicit traffic in the West Indies, upon other occasions, when they supplied the ships of their own and our enemies from St. Eustatia, and even at sea: But probably ministers forgot that Holland was a state composed of merchants, whose great view was to promote and extend their commerce, and that acts, which in other countries would be deemed of a very heinous and punishable nature, were considered in Holland but mere venial offences: even allowing the contrary, his argument held equally good, as to the point of aggression; that it was not in the power of the States General to give a clear and specific answer to Sir Joseph Yorke's memorial; nor even give a promise to punish or redress any grievance which might have been occasioned by the conduct of a person or persons amenable to the provincial States of Holland only, and exclusively answerable to the local tribunals within that particular jurisdiction.

The noble Lord in the green ribbon had talked of the Duke of Marlborough, and that great and magnanimous Prince, King William, on whom he had bestowed such just eulogiums, and ventured to answer for them, that if they had been now alive they would act precisely as the present ministers had done. He denied the assertion to be founded, and spoke, he presumed, upon as good an authority as that of the noble Lord, upon the authority of history—of what had really happened, not upon what might probably have happened.

In the first place, he would contend, that the Prince of Orange, as King of England, would never have broke with Holland, or have disunited a conjunction of power, which

was the only barrier for the ſupport of the Proteſtant religion. and the preſervation of the liberties, or balance of power, in Europe, againſt the encroachments and alarming ambition of Lewis the XIVth, or now of the Houſe of Bourbon. On the contrary, that great Prince, as King of England, and while Prince of Orange, conceived the intereſts of Great Britain and Holland to be the ſame. He carried this idea to its fulleſt extent, and all the real friends of both countries united in the ſame opinion. Since the firſt eſtabliſhment of the republic, in the reign of that glorious and wiſe Princeſs Queen Elizabeth, this continued the prevailing idea in the Britiſh councils; unleſs in a few inſtances, when the exception explained itſelf—he meant the conteſt between England in the time of the Protectorate and Holland; and the two Dutch wars, in the reign of Charles the Second. Cromwell, it was well underſtood, knew little of foreign politics, and beſides was led to connect himſelf with France, in order to ſupport his uſurpation. The wars in the reign of Charles the Second originated in the court, and from motives in which the nation had very little to do, unleſs it was to plunder both Holland and England, ſeizing the Dutch property, and diverting the public grants to private purpoſes. The preſent meaſure, he was perſuaded, originated likewiſe from the court, and though probably not from the like motives, from others no leſs abſurd, deſtructive, and diſgraceful to the nation, as he ſhould hereafter endeavour to demonſtrate. On this ground he was ſupported by hiſtorical evidence to aſſert, that it had been the policy of the moſt able and honeſt ſtateſmen this county ever boaſted of, to cultivate not only alliances, and to form connections with Holland, but indeed the moſt inward confidence and friendſhip.

The noble Lord in the green ribbon, when he ſpoke of what Marlborough and King William would now do, ſeemed to be totally ignorant of what they had done. The Prince, though King of England, and Stadtholder, was repeatedly informed, that ſeveral of the ſubjects of the United Provinces correſponded with his enemies, and ſupplied France ſecretly with military ſtores for carrying on the war. He had evidence of it from their written correſpondence, on various occaſions. He complained in his double capacity, as King and Stadtholder, but was obliged to ſit down contented, without obtaining redreſs: nay, more, he once got a packet into his hands directed to ſome of the principal traitors, who were burgomaſters, and was obliged, in his magiſtratical cha-

character, to lay it unopened before the States General, who, after the fulleſt evidence of the fact, ſuffered the whole to paſs away unnoticed, without even cenſure, much leſs puniſhment or public diſavowal. At this time, nevertheleſs Great Britain and Holland were contending for their all, their reſpective religions and liberties, againſt Louis the XIVth, then in the zenith of his glory. When, therefore, noble Lords talked of ſatisfaction, puniſhment, diſavowals, &c. he could not help ſmiling, particularly when this language was ſupported upon the great names of Orange and Marlborough, the latter of whom, as well as the former, while he was pulling down the formidable and alarming power of Louis the XIVth, and procuring a barrier for Holland, was well apprized that many of the ſubjects of that republic were concerned in tranſactions, which, in the language of the royal manifeſto, the meſſage, the propoſed addreſs, and the noble Viſcount who moved it, would have been deemed an aggreſſion ſufficient to juſtify a declaration of war; yet the latter, that immortal hero, Marlborough, was ſo puſillanimous and wretched a politician as to continue to beat, year after year, the armies of France, and to fight the battles of a nation of ſecret traitors, and unprincipled republicans!!!

On the other part, the injuſtice of the commencing hoſtilities, he was no leſs full and explicit. He ſaid it would root the deeper the encreaſing jealouſy, and confirm the general odium which had prevailed all over Europe, on account of our conduct towards France, previous to the declaration of the laſt war; proofs of which he was witneſs to when he travelled on the continent, in innumerable inſtances. He was, it is true, well received by certain perſons, but whenever the ſteps taken in reſpect of the ſeizure of the French ſhips happened to be mentioned, it was either condemned in the ſtrongeſt and moſt pointed terms, or, if people remained ſilent, a mixture of horror and indignation ſeemed to be apparently painted on their countenances. At a later period indeed, when the brilliancy and rapid ſucceſſion of our victories and ſucceſſes raiſed the name of Briton to the higheſt pinnacle of fame and military glory, they dazzled the eyes of the multitude, and in ſome meaſure ſanctified the means by the end: but even then, when men reaſoned, he could perceive either in the words or actions of thoſe he mixed with, a ſecret, or public diſapprobation, indeed, of deteſtation of the firſt beginnings of that war. All Europe was hurt and

and alarmed; we were called a nation of pirates and public plunderers; and it created, he was persuaded, the seeds of that jealousy, the unhappy fruits of which have been the principal cause that one half of Europe are in arms against us, and the other half remain inactive, and express a kind of silent pleasure at our approaching downfall.

But what was the conduct which created the jealousy, indignation, and secret ill-will, which he had been describing? Nothing, when compared with that which ministers had now advised their Sovereign to adopt—though war had not been formally declared against France, hostilities had commenced in the eastern and western world—[In the East Indies in 1753, and in the back part of Virginia in 1754, where Washington, then a Major of a Virginia militia regiment, with some regulars, to the amount of 300, were made prisoners.]—Yet so careful was the British cabinet not to give cause of complaint or jealousy to the neutral powers, that they ordered the ships and cargoes to be laid up and preserved, or where the commodities were perishable, to be sold and held till the end of the war, for the benefit of the respective owners, which intention was afterwards faithfully and punctually carried into execution.

This was the measured, cautious, and equitable conduct of the wise and honest ministry of George the Second. Now for a minute compare and contrast it with that of their present successors. In a time of the most profound peace between the two states, allied by treaty, friendship, and common interest, without any hostile appearance or preparation on the part of Holland; in the midst of the most perfect security and confidence, as well upon the faith of subsisting treaties, as under the universal and established customs current among, and acknowledged by, every civilized nation on the face of the earth; upon an uncertainty at the best, and so far as appears, upon the most shameful pretext imaginable, what has been the decision of the British cabinet? To seize all Dutch ships, whether of private or public property; whether under commercial protection, or drove in by stress of weather, or the threatened destruction of the elements:—and what next?—It may be supposed to compel justice, if withheld; to procure satisfaction for some insult; to indemnify our own subjects; and to retain the property thus seized and withheld till the object, whatever it might be, should be attained.—By no means:—but to the disgrace of the country, to the total dishonour of its councils, and in direct

viola-

violation of all laws, whether of nations, of nature, of public honour, and private faith, the ſhips and cargoes are ſeized, not to be retained, but confiſcated for the joint advantage of the captors and the ſtate; and what is worſe than all, a commandment given to render the municipal tribunals the inſtrument of legalizing an act, which is equally repugnant to every law now exiſting in the written codes, current, or of authority, throughout Europe.

His Lordſhip, after preſſing this point with great ſtrength of argument and in a moſt rapid flow of language, obſerved, that beſides the injuſtice of the act, as a matter of ſtate, it was a manifeſt impoſition on the whole nation, and ſeducing the public upon two grounds, equally injurious to the honour of the nation and its intereſts. It tended to miſlead the public, by inflaming it with ill-founded reſentments; and to gain the approbation of individuals, with a proſpect of acquiring property to which they had no title, but what was founded in force and plunder.

But as he ſaid when he firſt roſe, that we ought, in his opinion, to endeavour to tread back the ſteps which led us into our preſent ſituation, and at all events ſeek to effect a reconciliation, ſo he was clearly of opinion that it was not yet too late. An opening, and a favourable one, ſtill preſented itſelf, if the news-papers were to be depended upon, which was the only ſpecies of information the noble Viſcount ſeemed willing to give their Lordſhips;—It was all their Lordſhips were likely to have;—it was all the information he had himſelf—The province of Zealand, as ſtated in the Dutch Gazette, declared a deſire of peace, and hoped it was not too late, but might be yet effected. It was the duty of miniſters to improve that diſpoſition towards reconciliation. He doubted not but it was ſtill practicable; and as the only proſpect of procuring the ſalvation of this country, and relieving it from the inſurmountable difficulties which ſurrounded it on every ſide, he earneſtly recommended it to their moſt ſerious attention. There was, it was true, one great impediment which ſtood in the way, and which the folly and precipitation of miniſters had been the cauſe of. So far the ſcheme had anſwered the purpoſes it was intended to ſerve: the Dutch were called traitors and ſecret enemies, in order to bring upon them the public odium; the dignity and honour of the crown deſcribed as being openly wounded; the ſalvation of the ſtate, ſay miniſters, is deeply intereſted in the moſt ſudden and deciſive exertions againſt our new enemies; and to give

give the whole the more certain ſucceſs, individuals are called upon and invited to ſhare in the plunder; their fortunes are to be made by the ruin of an innocent people, and that merely on account of the particular conduct of a few factious perſons. The alarm is ſtruck, the ſound is inſtantly conveyed to every part and corner of the kingdom, and the people are conjured to concur and aſſiſt in the general propoſed deſtruction of a miſrepreſented people. Miniſters, like the parſons on the ſea-coaſts, piouſly point out the booty; one party are detached here, another there, a third by a particular path, and all exhorted to repair to the wreck, in order to partake of the plunder. No perſon waiting or heſitating to aſſiſt in the general ruin, or making it a caſe of conſcience.

The impediment which ſtood in the way of reconciliation, and to which he alluded, aroſe from the impolicy as well as injuſtice of the meaſure—that was iſſuing letters of marque and repriſals, and of courſe ordering the Dutch property to be confiſcated. This, he was ready to confeſs, would throw a ſtrong bar in the way of amicable adjuſtment; becauſe the public faith of the nation was pledged to the private captors, and a property veſted in them by law, which could not now be reclaimed, upon any other condition ſhort of giving them an equivalent.—Be that however as it might, ſo great was the object, in his mind, of an immediate reconciliation with the republic of Holland, that though the difficulties were greater than they ſeemed to be, and the expence of redeeming the prizes already made, by giving ſatisfaction to the captors, were double, nay treble what it was; he was clearly of opinion, that no ſtep, induſtry, or management, ſhould be left untried, in order to regain if poſſible the friendſhip and alliance of Holland, or at all events to promote a friendly neutrality.

In the courſe of his Lordſhip's argument, he obſerved, that ſovereign ſtates were extremely ignorant of the municipal laws and internal regulations which prevailed in other governments; and particularly ſo in reſpect of Great Britain and Holland, the latter of which was notoriouſly known to be the moſt intricate and complicated in its movements that ever exiſted.—He recollected an inſtance, which happened to himſelf, when he had the honour of ſerving his Majeſty in an high office. [Secretary of State for the ſouthern department] It was in the caſe of the Spaniſh Jeſuits, who were ſuppoſed to poſſeſs a very conſiderable property in our funds, which their ſovereign, when he had diſſolved that order,

order, and confiscated their property within his dominions, wished to seize.—The Spanish minister made repeated applications to him on the subject, by the direction of the King his master.—He was astonished at the request, and endeavoured to convince him of the total impracticability of complying with it; the constitution would not permit it, for the laws were so strong and specific against it, that even the property of a traitor could not be attacked in the manner desired.—But all his endeavours were in vain. The ambassador (Prince Masserano) though an able and worthy man, could not be persuaded, but the court of Great Britain were favourably inclined to the Jesuits; and that we could have easily granted, what, upon motives of concealed policy, he presumed we had refused.

His Lordship having explained very fully his opinion relative to the injustice of commencing hostilities against the Dutch republic, considered the measure on the other ground, that of expediency; and it was here his Lordship, with his usual abilities and extensive information, entered into a comprehensive, though a brief and correct, view of the state of the nation.

He laid it down as a proposition, to which every noble Lord who heard him must assent, "that all the public misfortunes which the nation had already felt, and the many more which it was in all probability doomed to experience, were caused by the American war," which war was the native offspring of ministerial ignorance, obstinacy, and want of political principle! It had for its immediate object the increasing the influence of the crown, and the power of the sovereign. It was conceived in ambition, it was nurtured by folly and rashness; it was founded in ideas totally subversive of the British constitution; it was unjust and wicked in the extreme; it was carried on with violence and want of prudence; and prosecuted in all its parts, with the most unrelenting and unheard of cruelties.

His Lordship confessed, in respect to the recovery of North America, he had been a very Quixote, and expected, because he most anxiously wished, that our colonies might be prevailed upon to return to their former state of connection with this country. He had indeed pushed his expectations further and longer, he believed, than any impartial person, informed of all the circumstances both here and in America, the present administration excepted, ever had;—but his hopes had long since vanished. He had waked from those

dreams of British dominion, and every important consequence which he flattered himself might be derived from them But as in the course of what he might have urged in favour of those delusive hopes, and vain and idle expectations, some expressions of a loose, general, and indeterminate nature, might have fallen from him, he wished to be perfectly understood. Much as he valued America; necessary as the possession of the colonies might be to the power, glory, dignity, and independence of Great Britain; fatal as her final separation would prove, whenever that event might take place; as a friend to liberty, as a reverer of the English constitution, as a lover of natural and political justice—"he would be much better pleased to see America for ever severed from Great Britain, than restored to our possession by force of arms, or conquest." He loved his country; he admired its political institutions; but if her future greatness, power, and extent of dominion were only to be established and maintained on the ruins of the constitution, he would be infinitely better pleased to see this country a free one, though curtailed in power, wealth, &c. than possessing every thing the most sanguine expectation could picture to itself, if her greatness was to be purchased at the expence of her constitution and liberties.

To the injustice of the war, in every point of view in which he had considered it, his Lordship said he would descend to such particulars as appeared to him to apply to the present question, so far as it was a measure of expediency.

"Look at New-York; what has been done there? Nothing, or worse than nothing; the commander in chief hemmed in on New-York island, and its vicinities; not a single blow struck there for these three last campaigns, nor in that part of America, but the shameful retreat from Philadelphia, when the General escaped with his whole army, rather by chance and the misconduct of the enemy, than by the natural ability of the force under his command. Sir Henry Clinton is a brave and experienced officer; but Sir Henry Clinton cannot perform impossibilities. Three campaigns have passed away since, and nothing has been done but a few predatory excursions, which are a disgrace to the army, a disgrace to the counsels which have directed them, and, I may add, a disgrace to the whole English nation. Nay, instead of gaining any advantages, or making any conquest, Rhode-Island has been abandoned; and if report may be credited, the next measure will be that of abandoning New-

York,

York, and then you will not have a foot of land but Carolina, and what proſpect there is for retaining that, I ſhall, as I proceed a little further, take notice of. I have heard, from tolerable good authority, that New-York muſt be abandoned unleſs the requiſition of the commander in chief be immediately complied with; and when I tell your Lordſhips what that requiſition is, ſuch of your Lordſhips as have not been informed of it will think with me, that the evacuation of New-York is unavoidable. Sir Henry Clinton has written home for ten thouſand men, and has added, that he cannot ſtay ſo as to anſwer any good purpoſe, if that reinforcement be not ſent out to him early in the ſpring, nor, he fears, at all, if favourable circumſtances ſhould ariſe on the part of General Waſhington, ſuch as loans, further ſuccours from France, &c. Will miniſters ſay that they are preparing to ſend out ſuch a reinforcement? They know the contrary; they dare not;—they cannot. What, ten thouſand men! I will venture to maintain, and am able to prove, and I ſay it in the hearing of the noble Lord in the red ribbon over the way (Lord Amherſt) who if I am wrong has it in his power to contradict me, that to defend the whole iſland we have not above fifteen thouſand men, excluſive of the militia. If then, added to the threats of France and Spain, who I have ſome reaſon to fear are meditating an attack on our coaſts, we may expect a predatory war to be carried on by Holland againſt the eaſtern coaſts of this kingdom; I believe it will need very little argument, and leſs oratory, to ſatisfy the noble Lords who hear me, that a length of near fifteen hundred miles of coaſt will call for the whole of this remnant of an army to defend it againſt the eventual incurſions, debarkations, &c. which that very circumſtance alone may ſuggeſt to our enemies; a circumſtance which they are no ſtrangers to, though I ſhould not be ſurpriſed to hear ſome noble Lords riſe, and with a very grave face accuſe me of conveying improper intelligence to the enemy. There was indeed a time when an army to defend us againſt our enemies was in a manner uſeleſs to us. I mean when we were in poſſeſſion of the dominion of the ſea, when we could with perfect ſecurity ſpare the laſt ſoldier to conquer in every part of the globe. Will noble Lords tell me that that is the caſe now? No! I think not;—confident as miniſters are, bold in his aſſertions as the noble Earl over the way, who preſides at the head of the marine eſtabliſhment, is, he will hardly hazard the aſſertion, when I ſay,

 that

that the dominion, not of the ocean, but of the narrow seas, our own very channel, was lost, when the French took possession of it last summer was twelvemonth, and our flag for ever tarnished and disgraced, when our channel fleet took shelter in Portsmouth harbour, and secured itself by flight from a superior and pursuing enemy. What has been the disgrace which has lately happened? The noble Earl may take it either way. We were not in force to meet the enemy in the Bay, but permitted them to convoy one of the richest and most valuable trade fleets that ever entered into the ports of France, without so much as an attempt to interrupt them; or being superior to D'Estaing, our ministers, in their usual bungling, incapable manner, gave orders to the commander of the British squadron not to risque a battle.

" This is a circumstance no less melancholy than disgraceful. I speak only from public report: administration are censurable at all events; if the news-papers may be depended on, which form the great source of intelligence recommended to your Lordships by the noble Viscount in the green ribbon (Stormont.)

" Be these circumstances as they may, I believe there is not one of your Lordships who is not fully persuaded, that France and Spain, without Holland, are an over-match for us at sea; and consequently, that the defence of this island rests entirely upon the militia and the army—army, did I say? We have no army; our army in fact is ruined; it is indeed totally annihilated. The noble Lord in the red ribbon knows it; and if he opens his mouth at all on the subject, I contend must, and I dare say will, acknowledge it; and I will tell your Lordships why, and how it has been ruined. It is the raising new corps that has ruined it. The recruiting service is at an end; it is no more. Men cannot be had. Why so? The very means to augment it has been the cause; and the motive for adopting the measure of the new levies, a most infamous and destructive one, must stare every one of your Lordships in the face. What is it? subaltern officers, men who never saw service, and some of whom never handled a spontoon, are made field officers, or are promoted to regiments and battalions. The recruiting service is become a downright money transaction; a mere piece of brokerage! A person who has interest with the minister, undertakes to raise a certain number of men. How does he do it? He purchases it—not for a specific sum;—No! he purchases it with a certain number of men; and he purchases them men again, at a most

a moſt exhorbitant price: thus this new-dubbed colonel goes to market with a full purſe, and outbids every man; buys every man whom he can tempt to enliſt, no matter what his age, infirmities, or unfitneſs for ſervice may be. If an officer recruiting for the old corps, in the regular eſtabliſhed mode of ſervice, comes in competition with the recruiting ſerjeants of theſe new corps, he ſtands not the leaſt chance; he is laughed at. This is not all—the men are enliſted under the idea of ſtaying within the kingdom. Miniſters, ignorant and incapable as they are, know better than to truſt the defence of the kingdom to ſuch men. Arts are reſorted to, and propoſitions made, and temptations held out to thoſe ſoldiers to embark for foreign ſervice. Attend then, my Lords: theſe new corps are ſent, without either diſcipline or knowing the right end of a muſket, to unhealthy climates, where they periſh daily by hundreds. I have heard, from good authority, that out of one of the beſt of thoſe regiments lately ſent to Jamaica [ſuppoſed to mean Cary's corps] conſiſting of upwards of a thouſand men, not more than 97 ſurvived, or if alive, were fit to do duty. Another great inconvenience ariſing from this mode of recruiting is, that the old corps are thereby rendered totally ineffective, which has at length compelled the commander in chief to come to a regulation, that of reducing the companies to 56 men each; and yet, low as this eſtabliſhment is, the old corps are conſiderably defective, and the army we have to defend us is compoſed chiefly of officers, which is exactly the reverſe of the conduct of one of the greateſt captains of this, or any other preceding age, the King of Pruſſia, who has no more than three commiſſioned officers to every hundred and fifty men. Beſides the weakneſs of ſuch an eſtabliſhment, which ought to be the firſt object, it is a great additional expence, and at the concluſion of a peace, muſt be the means of loading the nation, and encreaſing the half-pay liſt to an enormous amount.

"I thought it not improper to point out to your Lordſhips the numerous evils which the mode adopted of raiſing new levies has been productive of, and ſhall now return: I ſay, that you have no fleet able to face your enemies. I maintain that you have no army even equal to the home defence; and I am authoriſed to conclude, from theſe premiſes, that America, even according to the ideas of miniſters, is loſt beyond even any thing reſembling probable expectation, becauſe you cannot ſpare the reinforcement thought neceſſary by the commander

commander in chief for carrying on ſucceſsful operations during the enſuing campaign.

"But if the northern and middle parts of the colonies be abandoned, what proſpect have you to the ſouthward? A very poor one indeed! I know the officer who commands there; I love him; I admire him; I revere him. We have been old friends and brother ſoldiers. We ſerved under the ſame great maſter at an early period of our lives [ſuppoſed to mean Prince Ferdinand of Brunſwick]. I am ſorry I cannot ſay that I profited much by that great officer's inſtructions or example. I know that Lord Cornwallis is no leſs zealous, than a brave, active, and judicious officer. My perſonal eſteem for his Lordſhip makes me lament ſome things which have happened. I know that he is no leſs humane than brave; and I am therefore inclined to preſume, that the cruelties and ſeverities exerciſed in his name, and under his authority, never originated with him. I am perſuaded his mind is of another texture; that he never could have acted upon his own judgement, when he licenſed or authoriſed thoſe ſeverities; but he has been obliged to comply with the orders received from hence. It fills my mind with horror, and I tremble for the conſequences, when I know the reſentments and deteſtation it will create in the minds of the people of America; and, if poſſible, ſtill more, when I reflect on the melancholy ſituation of thoſe brave and gallant officers and ſoldiers, who, to all the neceſſary toils and perils of war, will be ſubject to fall victims to what their enemies will deem a juſt and neceſſary retaliation; juſt in its principle, and neceſſary in its object, in order to put an end to the wanton effuſion of human blood.

"But what is the ſituation of Lord Cornwallis? Why, after an exertion, which muſt do him infinite honour; after a combination of circumſtances, improved by a ſeries of conduct, which the greateſt veteran officer might be proud of; he totally defeated the enemy. But what then? For want of force, he has been obliged ever ſince to act upon the defenſive, inſtead of the offenſive. A very conſiderable part of his army has been ſurprized, and the whole either taken priſoners, killed, or diſperſed; ſo that by this time, in all probability, his Lordſhip has been compelled to retire to Charles-Town, and relinquiſh all the advantages which he had good reaſon to promiſe himſelf from the victory at Camden, or is waiting for reinforcements from New-York. This, in my opinion, is the ſtate of your affairs in America; and by what I can learn from the news, papers,

papers, for I ſpeak upon no better authority, the expedition under General Leſlie has failed, or worſe than failed; for though the General met with little or no oppoſition in Virginia, the manifeſt ſpirit and diſpoſition of the inhabitants of that province portends ſomething no leſs fatal than actual defeat. The people, I underſtand, fled on all ſides for want of protection; but not a ſingle perſon, after all the predictions of a noble Lord in the other Houſe [ſuppoſed to mean Lord George Germain] came in under the royal ſtandard, or claimed the benefit or protection held out by the proclamation. Taking therefore the whole of the American war, as connected with the preſent queſtion, which, if I underſtand right, is the only pretence for the manifeſto on your Lordſhips' table, I look upon America as already loſt, as already irrecoverably loſt!

"The noble Viſcount in the green ribbon has predicted many ſignal advantages which will be derived from the preſent rupture with Holland. He tells you that they will be ſtunned into their ſenſes. I aſſure his Lordſhip that I much fear that they will. I fear that the Hollanders will feel the juſt ſenſe they entertain of our unprovoked violence and piratical acts; for I ſhall never conſider the captures made of their ſhips, in a time of profound peace, in any other light. I fear they will feel the moſt warm and well-founded reſentments, and that thoſe feelings will ſuggeſt the moſt vigorous and effectual means of reſiſtance and retaliation. The noble Viſcount builds mightily upon their unprepared ſtate, on their inability to defend themſelves, or act offenſively. He ſays that their coaſts and floating property are at our mercy; he ſays, that their ſubjects in the Eaſt and Weſt-Indies are totally unapprized of the approaching rupture, and that they are of courſe naked and defenceleſs. I ſuſpected the noble Lord to be as ignorant of the expediency of the war, as he ſeems to be totally miſtaken reſpecting the juſtice of it. Does the noble Lord know what ſtate of defence the Dutch poſſeſſions in the eaſtern and weſtern world are? I think I may venture to aſſert, his Lordſhip knows exactly as much concerning that, as he does of the ſpirit and diſpoſition of the people whom we are about to contend with. The Dutch, though a commercial, are nevertheleſs a brave and courageous people. They have ever oppoſed tyranny in every ſhape it has ſhewn itſelf, and perhaps in their firſt ſtruggles againſt Spaniſh cruelty and Spaniſh oppreſſion, manifeſted proofs of magnanimity, courage, and heroiſm, not ſurpaſſed if equalled by the moſt celebrated

lebrated and renowned nations of ancient or modern times. I need not deduce a ſeries of facts, in confirmation of what I now aſſert: the hiſtory of the two Dutch wars in the reign of Charles II. affords ſufficient proofs, not to mention many inſtances of a later date, during the reigns of King William and Queen Anne. The Dutch, it is true, are merchants, and ſea-faring people by profeſſion; but it is well known, that we have, as well as France, transformed them into ſeamen, and ſoldiers, when oppreſſion and injuſtice rendered it neceſſary for them to bear up and reſiſt their enemies and oppreſſors.

"The Dutch are ſtill the ſame people; it is true they have all their war eſtabliſhments to arrange and new model, that they want naval officers; but give me leave to ſay, not in the degree that perſons uninformed may imagine: as I underſtand, that ſeveral officers of that nation are now in the ſervice of ſome of the naval powers of Europe, and will of courſe be called home to defend their country; yet granting the argument of a want of experienced officers to be puſhed to its greateſt extent, what does it amount to? No more than a temporary want. Unleſs in the ſingle inſtance of the ſhort naval experience gained in the conteſt with this country during the Protectorate, the people of Holland had remained in a ſtate of profound peace for more than half a century; yet when the war broke out in the year 1665 with England, there appeared no want of able officers and ſkilful commanders. The fact was, that almoſt every man in the commonwealth became a ſoldier or a ſeaman; nay, perſons totally unfit, by habit and profeſſion, ſtood forth and changed the gown for the ſword. Among the reſt, the great Cornelius De Witt took upon himſelf the command of a grand ſquadron, and fought one of the moſt bloody naval battles which happened during that war.

"The noble Lord, as I have obſerved before, ſuppoſes that the poſſeſſions of Holland muſt fall; but I cannot ſee by what means. If they ſhould fall, they muſt ſurrender from choice, not neceſſity; for while France and Spain continue to remain maſters in the European ſeas, the Dutch cannot poſſibly have any thing to fear at home, and I believe, as little out of Europe as in it. We have already too much buſineſs on our hands, and though we had fleets to ſpare, where are the troops neceſſary for the proſecuting offenſive operations? The truth is, it is we, that ought to be alarmed for our poſſeſſions, not Holland for theirs; and ſhould Holland

land unite with France and Spain in attacking us in the East or West-Indies, I cannot see, instead of meditating conquest, how it will be possible for us to maintain our own dominions out of Europe."

His Lordship having very fully urged these points, in order to prove the inexpediency of the measure, shewing how unequal we were, even to cope with the enemies we had already to contend with, further maintained his general argument upon the probable conduct of the northern, or neutral powers, particularly the probable conduct of the Empress of Russia, who, he believed, would consider herself as bound by positive, or implied engagements, to assist Holland, thus treacherously attacked; not on account of a pretended treaty, not executed under any authority, nor ratified even by the authority under which it was framed, but really for having entered into a neutrality proposed by the Court of Petersburgh to Holland, and the other powers of Europe not engaged in war. He should not be surprised to hear similar arguments to those used by the noble Viscount in the green ribbon, urged with all imaginable solemnity and confidence; "that it was not the interest of the Russian court to break with us; that it would be unjust and impolitic; that honesty was the best policy; that it would be madness in the Court of Petersburgh to involve themselves wantonly in the quarrel; and to the last degree ungenerous in us, so much as to harbour such a suspicion, &c. &c." He remembered very well, not long since, to have heard the noble Viscount assign the same reasons exactly respecting Holland, at the very time, according to his Lordship's account of this day, they were actually entering into a treaty with our own subjects, as an independent sovereign state; after, as a noble Lord observed [Chesterfield] they had given protection to a rebel pirate [Jones]; after they had been assisting our subjects in open arms against our authority, with ammunition, stores, and all the implements of war. When this kind of reasoning,—when this stile of argument, which applied equally to no case, and every case was resorted to, he wished noble Lords to give it that degree of weight, attention, and credit, exactly which it deserved. He had heard, indeed, the noble Viscount make use of the same arguments before Spain declared, and before that period, in respect of France. He heard his Lordship do the same while Holland was acting the hostile and unfriendly part, which his Lordship had described in such strong and vehement terms, which, he said, so deservedly merited the most exemplary chastisement, and

which was the only colour of argument that could be oppofed to the probability that Ruffia would eventually become an enemy in the prefent quarrel with Holland, as a member of the armed neutrality. But in this, as well as every other inftance, in which the dignity, reputation, and moft effential interefts of the country were concerned, what were the documents to which their Lordfhips were referred? They were defired to truft and put their whole confidence and reliance upon—what?—upon the Englifh news-papers and the Dutch gazettes? To anfwer minifters then upon their own authority —If either might be depended on, the Dutch had already acceded to the neutrality in due form, by their minifters fent to the Court of Peterfburgh for that purpofe; and the Emprefs in due form accepted of their acceffion. So that inftead of France, Spain, America, and Holland, we fhould fhortly have Ruffia, and in due time all the other members of the armed neutrality, to contend with, and of courfe every neutral naval power in Europe, Portugal excepted, combined or unneceffarily drove into meafures which muft, from the nature of fuch a confederate force employed againft us, ultimately terminate in our total deftruction, if not annihilation, as a fovereign independent ftate. Even Portugal began to fhew a difpofition extremely unfavourable to our interefts, and he had good reafon to believe fhe would, in the end, prove as inimical as the reft; a predicament hitherto unexampled in the hiftory of mankind, that of not having a fingle port open to us from Gibraltar to the North Pole.

He perceived that the noble Vifcount laid particular ftrefs upon the treachery of Holland; that is, he took the matter relative to the treaty, upon prefumption to be true, and afterwards drew conclufions from that prefumption equally ill founded. He faid, the Dutch had not only been guilty of an aggreffion, but that their ill conduct was highly aggravated, becaufe they committed the act while they claimed the privileges annexed to a ftate of prefumed alliance and friendfhip. To the fact he had already fpoken; on the conclufion drawn from its fuppofed exiftence, he would juft obferve, that the alliance between this country and Holland was no more; it was vacated by the very perfons who ftated the act as a breach of faith. The prefent fet of minifters had themfelves declared the fubfifting treaties between Great Britain and Holland to be diffolved by a paper delivered by Sir Jofeph Yorke to the States General in the year 1779, and yet had the modefty to accufe Holland of a breach of treaty no longer in being.

However

However light ministers might make of this formal renunciation, or artful they might be in their attempts to gloss it over, that circumstance might be productive of more serious consequences than they foresaw, or were willing to acknowledge. If Holland was free from her former engagements to Great Britain, most clearly she stood in respect of us as the other neutral powers of Europe did, which of course entitled her to form fresh engagements with any other power she pleased, or to accede to the armed neutrality for the protection of her commerce; consequently, if the universal report was true, that Holland had acceded, she would most certainly be entitled to every protection, security, and privilege enjoyed, or to be claimed by the rest of the contracting parties, namely, Russia, Sweden, and Denmark.

Lord Chancellor.

The Lord *Chancellor* (Lord Thurlow) rose as soon as the last noble speaker sat down, and observed, that it was by no means his intention to travel after the noble Lord through the very wide and extensive circle he had been pleased to describe—from Quebec to New-York, thence to Carolina; in short, over every foot of ground in North America, now under the immediate dominion of the British Crown, or which was withheld from us by force of arms by our foreign enemies, or rebellious subjects. He was as little disposed to trace the footsteps of the noble Lord nearer home, from Gibraltar to France, and so on to Holland, Russia, Sweden, Denmark, &c. If, however, in the course of what he had to submit to their Lordships, any point should strike him, or any circumstance recur to his mind in which he should have the misfortune to differ from the noble Earl, he would think it his duty to take notice of it. He was perfectly aware of his own insufficiency to contend with the noble Lord in the great line of politics. His studies had been directed another way. When, therefore, he found himself under a necessity, arising from conviction, to controvert the noble Lord's arguments, conclusions, or opinions, he should do it with that degree of diffidence which became a person under the predicament in which he must be supposed to stand; he would, nevertheless, declare his own sentiments fairly and without reserve, deeming it the first duty incumbent upon him, as well as every noble Lord who heard him, to speak or act upon those motives and reasons only which had brought home conviction to his own mind.

His Lordship observed, that the question which in the event of the present debate he would be called upon to put

to their Lordſhips, and which of courſe they would be called upon to decide, was ſimply this: "Whether the motion made by the noble Lord in the green ribbon, being a propoſed addreſs in anſwer to his Majeſty's meſſage; or the motion made by the noble Duke early in the evening, ſhould firſt receive their Lordſhips' approbation?" This brought the point really and truly in diſcuſſion, in his opinion, within a very narrow compaſs; for moſt clearly it was in that ſhape, and that ſhape only, the queſtion preſented itſelf to their Lordſhips, however loaded and confounded it might have been with collateral and extraneous matter, or ably diſcuſſed by ſeveral noble Lords who had expreſſed their diſapprobation of the queſtion originally moved. To that point he ſhould ſpecifically direct what he had now to offer, reſerving to himſelf whatever his own ideas might ſuggeſt, in reply, or obſervation upon many things which had fallen from thoſe noble Lords in the courſe of the debate.

What then was the ſtate of the queſtion on this ground? His Majeſty had ſent a meſſage by a noble Lord high in office, accompanied with certain papers. The former acquaints their Lordſhips, that his Majeſty found it neceſſary to direct letters of marque and repriſal to be iſſued againſt the Dutch nation; the latter contains an account of certain tranſactions which paſſed between our miniſter at the Hague and the States General, which induced his Majeſty to adopt that meaſure. Now in point of precedent he believed there was not a ſingle inſtance in the records of Parliament in which any other matter was permitted to be introduced between the anſwer to a royal meſſage and the determination of the Houſe upon its contents. It appeared, as far as he could learn, and if he was miſtaken he expected he ſhould be ſet right, that no precedent of the kind exiſted to the contrary, but that the cuſtom or uſage of Parliament had at all times, and upon every occaſion, given this decided preference to intimations, meſſages, and communications from the throne. Yet ſuppoſing that the preſent caſe was totally a new one, that from its nature, novelty, or importance, it was entitled to be taken out of the general rule, the arguments urged in favor of the exception he preſumed ſhould be ſufficiently cogent and concluſive to ſhew that it came under that deſcription.

This led him to the principal, nay the only ground or argument on which the noble Duke's motion was attempted to be maintained. It had been ſaid that the documents on the

table

table were not such as justified the measure; consequently, that either other papers ought to be laid before the House, to satisfy their Lordships that the real facts and transactions justified the measure; or, that the message upon the documents submitted to the House was not such as entitled it to their Lordships' concurrence.

It would be very needless, he presumed, to press the answer to this mode of reasoning to its full extent, the usage being clearly against it; but the argument urged to induce the House to depart from this general rule is this; that the papers being deficient, the whole matter will ultimately be decided upon should their Lordships now content to agree to the address, and those noble Lords who disapprove of the measure, as grounded upon the letters on the table, will hereafter be for ever precluded, or barred from giving any opinion on the subject, being bound by the forms of Parliament to the approbation of the present measure, though not justified by the documents upon the table.

Were this the real case, he confessed, that the uniform acquiescence in messages from the throne, or rather the preference such messages always had in the contemplation of Parliament, would, on many accounts, prove extremely inconvenient, and be subversive of that expected and wished-for unanimity, so necessary to the successfully conducting and carrying on the business of government. But he begged leave to say, that was not the case; nor did such approbation, as precedent had established respecting royal communications, bind in substance such noble Lords as were only bound in form, and who had acquiesced merely in compliance with the customary mode of parliamentary proceeding; for every noble Lord who thought the information on the table defective or incomplete, relative to the justice or expediency of the measure, would be as much at liberty to move for further information, as if he had never given a vote on the subject. He would neither be precluded nor bound by his vote of this day, but might, as soon as the present question was disposed of, or at any future or more fit or convenient time, rise and move for any papers he thought proper.

On the ground, therefore, of established usage and uninterrupted precedent, he should most certainly be against letting in the motion made by the noble Duke, in order to give it a preference to an address moved in answer to a royal message. It was a respect due to the crown which had never

been

been refuſed. In another point of view it amounted to a negative; it was a motion to poſtpone in the firſt inſtance, in the way of a previous queſtion, if he underſtood it right, and, in fact, might be conſidered as a refuſal on the part of their Lordſhips; for certainly, if the noble Duke's queſtion ſhould be carried, it would imply, or directly import a degree of cenſure on the meaſure. It would amount to this; that his Majeſty had exerciſed his prerogative of declaring war without juſt cauſe; or if he had a juſt cauſe, had declined to inform their Lordſhips of his real motives; either of which, in his opinion, would have been extremely indecent and improper.

When he made uſe of his Majeſty's name, he wiſhed to be underſtood as holding the language of Parliament and the conſtitution. Whatever ſteps had been taken, could be only imputed to his miniſters. They were their acts for which they were reſponſible, and by which they alone muſt abide. Nevertheleſs, though they were liable to be called to an account at a future time, and in a proper manner, the conducting of the affairs of government made it abſolutely neceſſary that the truſt committed to their care ſhould be preſumed to have been faithfully and properly diſcharged, till the contrary were proved: beſides, it would be impoſſible to conduct the affairs of the nation for a ſingle day, if the adviſers of the crown were to be employed in defending their conduct at the very inſtant it was announced. The crown, it was acknowledged, had the power of declaring peace and war; ſo far its adviſers had acted under authority reſpecting the preſent meaſure; if that power had been unſkillfully or corruptly exerciſed, thoſe who had adviſed his Majeſty would be ſtill as amenable to the judgement and cenſure of Parliament, if they ſhould be found to deſerve it, as if no ſuch vote as that propoſed by the noble Viſcount had ever received the approbation of the Houſe.

His Lordſhip having argued this point very ably, which, in his opinion, was clearly deciſive of the queſtion immediately before the Houſe, ſaid, that he thought it his duty to take notice of ſeveral matters which had been ſtrenuouſly urged by ſome noble Lords near him.

He obſerved, with much pain, that noble Lords, not contented with condemning the meaſures of adminiſtration as they were ſuppoſed to affect the intereſts of the nation, had induſtriouſly called their capacity into queſtion, mixing, at the ſame time, ſtrong perſonal alluſions relative to their ſup-

poſed

posed want of integrity, as well as talents; and in fine, upon many occasions general and specific, imputing their conduct to motives originating equally in weakness and wickedness. They did not even stop short there in their personal invective attacks; they confounded and transferred the presumed delinquency of individuals to government itself. 'The government was upheld by corruption; the measures advised by ministers were wicked and unjust.' A necessary resistance to the insidious attempts of our enemies was branded with the odious names of piracy, robbery, rapine, and public plunder. He was sorry to hear such language in that House; he felt most disagreeably, upon a variety of accounts, which he should just slightly mention, and upon none more than the notorious indecency of such expressions. He ever thought, and ever should continue to think, that even independent of the established order of their Lordships' proceedings, that no language ought to be used in that House, but what might pass current among any other society of gentlemen; and it hurt him greatly when he saw that rule departed from. These general invectives, no matter from which side of the House they came, had a particular evil tendency; they were productive of bad example, and he believed those who used them frequently felt the inconveniencies resulting from them, being free to declare, that he believed they were in general ill-founded, on which side soever they came, or to which side soever they were applied: and he once for all appealed to the noble Lords themselves, whether they were not conscious of the injustice of the imputations thus thrown out? He would upon this head just add, that he hoped noble Lords near him would give him credit, when he disclaimed any intention of a partial application of the remark:—he made it with no such intention, he wished the observation to apply indiscriminately for the purpose of reaching every part of the House, or not at all; for he solemnly protested, that he thought the abuses daily thrown out upon them without doors, were equally false and ill-founded with those to which custom had given a kind of sanction within—He hoped therefore, as well in regard of the high rank they bore in the state, and the respect which was due from each individual Lord to the other, as for the sake of example, that noble Lords would abstain from every thing which bordered on a *stile* of asperity and accusation, and from criminatory and recriminatory expressions, which, while they tended to disgrace and lessen the weight and dignity of their Lordships' deliberations, held

held out an encouragement to the lower orders of the people to transgress in the same manner.

Government, said some noble Lords, is upheld by corruption. To say no worse, this was not a language fit to be held in that House, because the majority of that House hitherto supported the measures which had been thus strongly censured. It implied an accusation of a very heavy nature, not directed exclusively against ministers. The language of debate, where ministers only could be affected by charges of this nature, admitting of a latitude of speech, might, in some measure, be allowable, and in some possible cases not improper, but when this was pushed further against those who supported the measures, as well as the ministers who devised them, it amounted to an accusation of a very serious nature, and was therefore, in his opinion, extremely indecent, and totally unjustifiable, unless those who urged them were ready prepared to prove the truth of their assertions.—It was expressly, if he rightly comprehended the arguments, raised upon such random assertions, meant to bear upon their Lordships as well as the immediate agents and actors;—he meant the ministers who recommended the measures, and the noble Lords who supported them, and who were, in the instance to which he was alluding, charged directly with corruption, or of being influenced by corrupt motives. He should submit the impropriety of urging charges of so deep and criminal a complexion, which, from their nature, were so difficult to be refuted, and so easy to be made, even without a possibility of detection; but what proofs did noble Lords deduce in the support of those accusations? None at all. They contented themselves with urging them in loose, indefinite terms, and thereby endeavoured to involve government in a general odium, and of course to add embarrassments to these which naturally attend every government in time of war, and this in particular, now labouring under peculiar circumstances of difficulty and distress;—perhaps such as were never before experienced by any other nation.

If noble Lords meant that their accusations should pass for no more than their current and intrinsic value, upon the general idea, that every opposition to government is always well founded, and that every administration is equally in the wrong; that every opposition arises from sound patriotism, and every administration is carried on by the means of corruption, the matter would hardly deserve a single animadversion. That, in the present instance, was not the case;

particulars had been ſtated; and ſpecific charges had been made. Miniſters had not only been accuſed of weakneſs, wickedneſs, and corrupt motives, but the effects of their conduct had been painted in the ſtrongeſt and moſt over-charged colours reſpecting foreign powers; the injuſtice of their conduct towards Holland had been held forth under the deſcription of piracy and public robbery. This country had been loudly and confidently affirmed to be in a ſtate of imbecility. Her councils deſcribed to be weak and wicked; and her power of reſiſtance, or offenſive operation, totally annihilated:—that is, our enemies are told, that we have made war upon them from the worſt motives, and after enflaming their paſſions, they are invited to do themſelves juſtice againſt a people, ſo far from being formidable as an offenſive enemy, as to be totally unable to defend themſelves. He would ſubmit to their Lordſhips, whether this was a language fit to be uſed? whether it was prudent or politic? or whether, to balance the great evil it might be probably productive of, it promiſed, or could promiſe, any advantage?——There was beſides a very obvious concluſion, which might be fairly drawn from this ſtile of argument and accuſation, that it laid a foundation for a claim of a monopoly of all the public virtue and talents in the kingdom; he was as ready to acknowledge, as any of the noble Lords might be to make their claims to public virtue and talents; but ſurely, their own good ſenſe, their diſcernment, and their candour, would all unite in inducing them not to exclude the juſt pretenſions of others.

It was not even the bad effects of what he had been animadverting on within thoſe walls, or elſewhere, within the iſland, which was the reaſon of expreſſing ſo anxiouſly his wiſhes that nothing of the kind had paſſed. Experience had convinced him, in a variety of inſtances, that every thing of conſequence which paſſed in that Houſe ſoon made its way to the Continent, and was turned to our diſadvantage, and in ſome inſtances had been productive of the moſt fatal conſequences. He flattered himſelf, that at ſo critical a juncture as the preſent, every diſcourſe which might in its tendency either lead to put our enemies on their guard, or ſerve to direct their attacks againſt the weak or vulnerable parts of the empire, would have been carefully abſtained from. He had indeed preſumed to give an hint of that kind early in the day, and hoped that noble Lords would endeavour as much as poſſible to ſtear clear of extraneous

 matter

matter, and confine themſelves to the queſtion. The preſent ſituation of this country was far from being a deſirable one. Unanimity was moſt devoutly to be wiſhed for; if that, however, could not be attained, it was in his opinion no very unreaſonable expectation to have formed, that noble Lords would refrain and avoid with all poſſible caution the touching upon matters which might in their nature ſerve to put our enemies on their guard, or inſpire them with expectations of victory and ſucceſs, on a confidence of our weakneſs or inability, either to annoy them or defend ourſelves.

Several arguments, he obſerved, had been urged to prove the injuſtice and precipitancy of the reſolution of iſſuing letters of marque and repriſal. He ſhould conſider them ſeparately, not in the order in which they were urged, but as they had ſtruck his memory, and that in the ſhorteſt manner, and feweſt words he was capable of expreſſing himſelf.

Three points had been ſpecially inſiſted on, in order to prove the injuſtice of our conduct towards Holland; one was, that the treaty on the table was not binding on the republic, or any part or parcel of it; the ſecond, although it had been binding on the province of Holland, that the aggreſſion could not be conſidered as an act of the ſtate, or the Seven United Provinces; and laſtly, that the treaty was neither acknowledged or ratified, becauſe it was no more than a project to be taken up and carried, or not carried, into execution, upon ſome future day, merely at the free will of the contracting or negotiating parties: ſtill later in the debate it had been ſaid by a noble Lord (Shelburne) that whether eventually binding, or not binding, it was not to take effect till after a certain contingency, namely, till after our rebel ſubjects, deſcribed in the inſtrument or treaty on the table under the appellation of the United States of America, ſhould be declared independent; and conſequently, till that event ſhould take place, which might never happen, the treaty could not be conſidered in fact, or even in deduction, to be in an exiſting ſtate.

To each of thoſe arguments he ſhould, as well as he was able, endeavour to give an anſwer, and ſhape it in ſuch a manner, as to apply it directly to the mere matter, carefully abſtaining from any perſonal or extraneous obſervations; but merely confining himſelf to the proper ſubject of debate.

He was conſcious of his great inferiority to the noble Lord who ſpoke laſt, in reſpect of the talents and information neceſſary to enable him to contend with his Lordſhip in points of political diſcuſſion; his purſuits and habits led another

another way, and by no means fitted him for such an undertaking. For this reason, if for no other, he would treat the subject in that stile of argument, which the portion of common sense and experience Providence had indued him with would enable him, and would familiarize it in such a manner, as to bring it on a level with his own poor understanding, as well as that of others, who, not having the abilities or opportunities of the noble Lord, were willing to content themselves with exercising those talents, however slender, in coming to a judgment and determination upon a subject, which their situation in that House, and the duty annexed to it, expressly called upon them to give on the present occasion.——All he could undertake to promise for himself, if he should come to an unwise or improper determination, was, that it should be an act, not of the intention; that is, if he was wrong, it should be with an intention to act right; and if in the event he should form a wrong judgment, he should have at least the private satisfaction, in his own mind, of imputing it to its true cause, a real inability to form a true one.

His Lordship observed, that many curious arguments had been resorted to, for the purpose of proving the injustice of the measure. It had been urged, in the first place, that the treaty found in Mr. Laurens's papers was no more than a sketch, proposition, or plan, to be hereafter considered, but in its present state by no means binding even upon the contracting parties themselves, much less upon those whom (at least one of them *i. e.* Holland,) it had no authority to bind. —Secondly, it had been strongly pressed by the noble Lord who spoke last, that though the treaty had been just what it imported to be, a treaty between the Seven United Provinces and the delegate or representative of our rebellious subjects in arms, it was nevertheless perfectly harmless and innoffensive in its nature; because it was not to take effect, but upon a contingency which might never take place, and if it should take place, would leave the States or Republic of Holland at liberty, in common with the other powers of Europe, to enter into a treaty with America, as she or they would with any other sovereign or independent state.—He meant, as the noble Lord had explained it,—"When this country shall have acknowledged the independency of America."

He should not maintain his argument upon the claim of existing alliances; he should not describe the secret treaty as an act of treachery or breach of public faith, and a violation of public friendship.—He meant to consider the act, as

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it might be ſuppoſed to affect two independent ſtates, who ſtood upon terms of mutual amity, and who bore no further relation, or were no otherwiſe bound to each other, than as acknowledging the general dominion, or force of the law of nations.—Looking, therefore, upon Great Britain and the Seven United Provinces bound to each other by this *common tie* and relation he had deſcribed, he wiſhed their Lordſhips to reflect, only for a moment, and ſee fairly and impartially how the caſe ſtood?

A very conſiderable part of the ſubjects of the Britiſh empire rebel againſt the ſovereign power, and by open arms endeavour to ſhake off the dominion of the eſtabliſhed government; and another power pending the conteſt, *i e.* Holland, does what? They enter into negotiation, and actually ſign a treaty of commerce with the rebels thus deſcribed. If this was not a moſt notorious aggreſſion on the part of Holland, he was totally at a loſs to know what could be denominated an aggreſſion; and for this expreſs reaſon, if for no other, "that it violated the very firſt principles of national good faith, and of the eſtabliſhed laws which mutually bind ſovereign and independent ſtates in their conduct towards their reſpective ſubjects." It was a farce to talk of a project, or a plan; the very inſtant this project or plan was ſigned it became a treaty; the tenor of the inſtrument ſpoke for itſelf; the terms of it were explicit and abſolute, and declared the fixed intentions of the contracting parties in every paragraph. There was not a ſingle condition ſtated or implied, but the one he was juſt about to offer a ſhort obſervation or two upon, which was, "that the treaty was not to take place till after our rebel ſubjects ſhould be declared independent."

It was totally unneceſſary to trouble their Lordſhips upon this ground, unleſs it were expreſſly maintained, that the whole of the queſtion of the juſtice or injuſtice of the meaſure turned upon that ſingle point. To preſs it in argument as part of the caſe, or by way of extenuation, was idle: if, on the contrary, noble Lords were ready to make it the great baſis on which the queſtion was to be diſcuſſed, he was ready to meet them upon that ground. The contingency, that ſo conſiderable a part of our rebel ſubjects in arms were to be declared independent, was a preſumption in itſelf of the moſt inſolent and aggravated nature, and plainly pointed to an encouragement to our rebel ſubjects to perſiſt in their revolt or rebellion. It ſpoke this language, or it imported nothing. We will give you every ſecret aſſiſtance in our power; we

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will dissolve, or worse than dissolve, all our engagements with the power you are at war with. We will, in like manner, promote the views of your new ally, the French King; and as by those means you will probably be enabled to throw off the natural allegiance and political obedience you owe the Crown and Parliament of Great Britain, when by our secret assistance, &c. you shall have happily attained your ends, we shall then faithfully perform the terms of this treaty now executed."

That this interpretation was agreeable to common sense, supported by common experience, he was ready to submit to their Lordships; nay, he would venture to affirm, that there was not a man alive, who thought freely and impartially on the subject, who could put so great a violence on his understanding, as to persuade himself, or others, that the treaty was not a compleat treaty in all its parts, and not a project, or mere leading proposition; or, that the condition or contingency to which the treaty was postponed, was any more than a mee trick to evade the consequences, which one of the contracting parties wished to avoid, if it was to be carried into immediate execution;—namely, an instant declaration of war upon the part of this country.

Another argument was speciously urged, and much insisted upon by the noble Lord to whose arguments he was now particularly alluding. He heard that noble Lord with pleasure. His Lordship was so well informed, and spoke so ably upon every subject he rose to, that he always attended to whatever came from his Lordship with no less attention than reverence. He bowed to his Lordship's authority upon almost every occasion, and when he differed from the noble Lord, he was ready to attribute it to a want of capacity in himself. But however circumscribed his own talents might be, in matters of difficulty he was bound in conscience to follow whenever they led; satisfied that nothing short of conviction ought to operate so as to induce him to come to any solemn opinion upon a subject of such magnitude and importance. He was sorry to be obliged to totally differ from the noble Lord. Several arguments, in extenuation of the conduct of the States General of the United Provinces, had been urged by the noble Lord, to demonstrate, that the treaty on the table, from the particular frame and constitution of the Dutch republic, would not admit of the satisfaction demanded by Sir Joseph Yorke from the States General, respecting the contents of that very offensive paper.—He was yet to learn, that either directly or indirectly, the answer given to our ambassador of postponing the

the explanation *ad referendum*, or the arguments used by the noble Lord, as to the constitution of the Dutch republic, contained the least shadow of apology or justification: so far from it, that he was clearly convinced, if no other point were considered, the conduct of the States General, in that particular alone, justified the issuing the manifesto.

He was ready, in argument, to give up all he had been hitherto contending for. He was ready to grant, that the treaty was no more than a project, and that the contingency, as to the time it was to take effect, softened the project, though it had been a treaty, and took the sting out of it. Yet still the refusal to give satisfaction, as in the instance of postponing *ad referendum*, had a retrospective view, and in fact confirmed and ratified every thing which constituted a real treaty, and upon that account solely amounted to an aggression, upon which the manifesto was founded.

This brought him back to what he meant particularly in this stage of the debate to make a few observations upon, that was the supposed intimate knowledge of the noble Lord respecting the frame and constitution of the interior of the Dutch government. With this he acknowledged himself to be little acquainted. It might or might not be just as the noble Lord had described. The difficulties might be numerous; the embarrassments great; the instances quoted by the noble Lord, which his Lordship had stated to have happened at former periods, might have been faithfully and correctly stated, with all the peculiar circumstances which accompanied them. But although he was ignorant of the particular facts referred to, and was ready to take the whose upon trust, he could by no means subscribe to the conclusion drawn by the noble Lord; for without entering into a critical enquiry about the respective rights, immunities, original institutions, and local privileges of this or that particular province, city, or district; or tracing out the relation they bore to each other respectively, or to the governing aggregate power, he was fully authorised to maintain, on the general law of nations, that every state was bound to answer for the act or acts of its subjects, or those who acknowledged its sovereign or supreme dominion. It was absurd to suppose, that a single exception could exist against this general rule; if there could one, another might be pleaded, and so on, *ad infinitum*. It would, in that case, be impossible to draw a line. And he wished that noble Lords would seriously consider the doctrine, and see what mischiefs it might, nay must lead to, and what an incongruity and repugnancy of conduct it would involve. In the

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present instance, for example sake, he begged their Lordships to look forward to the consequences which might flow from a conduct so absurd and preposterous ;—nothing less than that one, two, or more of the provinces might legally or constitutionally be at liberty to openly or secretly, directly or indirectly, support our rebel subjects in arms against us; while the other part of the republic, as allies, were giving us actual assistance for the purpose of reclaiming, and compelling them to return to their former state of obedience.

He was indeed ashamed to trouble their Lordships in refuting a species of apology, or justification, which carried, by inference at least, if not expresly, so glaring an absurdity on the very face of it; because he might have well saved the House and himself the trouble of offering a single syllable upon the subject, by standing on this indisputable, self-evident proposition, as supported by the law of nations, and the unerring rules of justice and common sense:—"That every state is responsible for the acts of their respective subjects ;—or, that every state is so far responsible for the acts of their subjects, as to disavow the subject matter of complaint, and promise that sort or *quantum* of redress which the constitution; or nature of the interior or municipal frame of their government enables or impowers them to give." Apply this principle or position to the case under consideration, and he believed there was not a noble Lord that heard him who would not instantly acknowledge, that the refusal to disavow the act, by postponing the consideration of the complaint *ad referendum*, though it might not be in the power of the States General to punish the offenders, answered exactly that species of implied approbation, which amounted to an aggression fully authorising the manifesto on the table.

Noble Lords, in the course of their arguments, drew similitudes from the nature of our own constitution; they maintained, that in many instances redress could not be had from individuals, nor satisfaction obtained but by due course of law. He believed no man disput'd it; but he wished that noble Lords would see how far this argument met the motives which induced the issuing the manifesto, or bore upon the case therein made out. He was not to be told, that in this country persons not offending against any subsisting law could not have a measure of punishment set out, where the municipal laws were silent; but he was yet to learn, or hear a possible case stated, where an individual, town, country, district, or part of this island, having committed an act that might lead to a just cause of rupture with an independent or sovereign

reign ſtate, in which the parties offending were not in ſome ſhape or other accountable to, and puniſhable by the municipal law, and the nation bound to make reparation, as being reſponſible for the acts of its ſubjects. If that was a clear propoſition, binding upon us, it muſt clearly bind every other power; and he wiſhed to be clearly underſtood, when laying down the foregoing general doctrine, that he meant to apply it to every particular, as well as more general caſe that could poſſibly ariſe: and he would puſh this propoſition its full length, and follow it with this ſpecific declaration, "that if any ſubject, or greater number, under the dominion or government of this country, ſhould, by an act of any kind whatever, be the cauſe of creating a difference or diſagreement, or what might, without ſatisfaction given by the neceſſary meaſures or remedies which the law of nations preſcribes: ſuch an act would be puniſhable, though no ſpecific municipal law exiſted for that purpoſe, upon another general law, no leſs binding and operative, namely, the law of nations." Were it otherwiſe, the power of the ſtate would be groſsly defective, becauſe it would ſuppoſe this, that a right deſtructive and ruinous to the well being of the ſtate reſided in individuals; a ſuppoſition too nonſenſical in itſelf, and too pregnant with abſurdity, to gain a moment's credit. "Every man, in his opinion, therefore, who propagated any thing which had, or might be productive of a rupture with foreign powers, was puniſhable, not perhaps by the municipal laws of that ſtate, but by the law of nations, by which every individual, as well as the ſtate itſelf, is indiſputably bound; and therefore in every inſtance in which the doctrine applied, the law of nations was conſequently interwoven into, and formed part of the municipal law of the country."

The noble Lord, to whom he had ſo often alluded, contended, that by the act of our miniſter at the Hague, and the renunciation of the treaties of 1674, the *caſus fœderis*, from the inſtant that paper was delivered, ceaſed to exiſt. He confeſſed, that this was the firſt time he ever heard of that circumſtance. He ſhould, however, take the noble Lord's word for it, being ſatisfied, that his Lordſhip would not have mentioned it, if he had not good ground for ſo doing. But, be that as it may, the exiſtence of the fact was totally immaterial to the argument, in the manner his Lordſhip had taken it up. It might take off from the treachery and turpitude of the act, but that was all, and very little even in that light; for if he underſtood the noble Lord right, the paper contain-

ing the ſuppoſed renunciation, or diſſolution of the exiſting treaties between Great Britain and Holland, was delivered in 1776; wherens the treaty ſigned by Van Berkel and the rebel delegate was executed in 1778, ſo that the renunciation was poſterior to the treaty.

The matter of juſtification being out of the queſtion, as he was juſt going to obſerve, the date of the two facts took away even the colour of extenuation; for it amounted to this clearly, that in the midſt of the moſt confidential ſeeming amity, and while three ſeveral treaties of alliance, and the moſt intimate connection ſtill remained in full force, our pretended friends, but real enemies, had, under ſuch ſacred ſanctions, ſecretly entered into a treaty with our rebel ſubjects, for a commercial intercourſe, which treaty had for its eventual object the ſeparation or diſmemberment of a conſiderable part of the empire, and the defection and independence of ſeveral millions of its ſubjects.

He had dwelt upon this circumſtance ſo long only to ſhew, that no part of the turpitude of the republic of Holland was, or could be leſſened, or done away, by any act of ours, ſubſequent to the date of the treaty; not that he thought it was neceſſary at all to juſtify the meaſure, having already conſidered it as a general propoſition, "that a power in amity with us, entering into a treaty with our rebel ſubjects, contrary to the eſtabliſhed law of nations, was in itſelf unſupported by any other circumſtance, fully ſufficient to juſtify the meaſure of iſſuing letters of marque and repriſal againſt the power who ſhould act in that manner."

His Lordſhip having very fully and ably debated the juſtice of the meaſure, then proceeded to deliver his ſentiments on its expediency.—On this point his Lordſhip was not ſo diffuſe.

He readily aſſented to the general impreſſion which had been endeavoured to be made on the Houſe by ſeveral noble Lords near him, that war at all times ſhould be the effect of neceſſity, but more particulary ſo at the preſent period, when we had ſo great and formidable a combination leagued againſt us. And if the meaſure, the propriety of which was ſo ſtrongly called into queſtion this day, was not a meaſure of neceſſity, thoſe who undertook to adviſe it would indeed be much to blame. For his part, he thought it came within that deſcription; and though he wiſhed, as much as any noble Lord who heard him, to avoid a meaſure at all

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events hazardous, and perhaps dangerous, and attended with singular difficulty and embarrassment, yet after fully considering the advantages and disadvantages which might or must result from it, he made a choice on that very ground, the only one on which noble Lords declared they thought the present measure defensible.

It was needless to recur to any further arguments upon the justice of the measure; he presumed that had already been amply discussed; the point now to be considered was, whether we could, with either honour or public security, have acted otherwise than we had done? He was of opinion we could not; because the possible evils which might arise from the step we had taken would be felt in their fullest extent, and in his opinion more fatally, if Holland had been permitted to effect that under cover of secrecy, and as it were by stealth, which she is now called upon to maintain at her risque and peril: it might, besides, possibly have this good effect, the compelling that justice by force of arms, which the most unexampled forbearance and every other effort in our power, by the means of amicable persuasion and remonstrance, had failed to accomplish.

But supposing that the same spirit and disposition which dictated the causes of complaint on our part, should still continue to direct the councils of the republic; supposing that they should uphold by force, what had originated in a breach of faith, and of national perfidy, a recourse to the common occurrences and situations in familiar life, applied to states and kingdoms, would, he believed, justify him in the conclusion, that an open enemy was at all times preferable to a concealed one. If therefore a pre-disposition against us should still continue to manifest itself, such as had made the present step necessary, he was persuaded that the most efficacious means of bringing the States General to a proper and just way of thinking, would be to convince them, that their conduct was not to escape unpunished in either event, whether they had acted hastily or designedly. For his part, he was of opinion, that the best mode of bringing Holland to a real explanation, all other efforts for that purpose having repeatedly failed, was to act precisely as we had done. Holland had now her option; she had it in her power to disclaim those apparent intentions which denoted every appearance of hostility, or she would be compelled to throw off the masque. Upon this ground, if upon no other, he thought the expediency

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of the measure might be fairly defended upon every principle of sound policy.

Many other arguments had been urged against the expediency of the measure, and many reasons stated, in order to prove its impracticability. What, will you add, said noble Lords, Holland to France, Spain, and America? Can you expect to defend yourself, much less make successful war against them all? This was not, in his conception, a mere matter of choice, nor the question, when thus stated, fairly put. It was not an option left to this country, whether she would not chuse to have Holland added to the confederacy already formed in Europe and America —far from it. He who could gravely propose such an alternative, or having it proposed to him, and could hesitate a moment to make a choice, must be worse than incapable—he must be mad. Were that the case, it would indeed furnish the most cogent proofs of every degree of ignorance and incapacity, which had by noble Lords been imputed to ministers; but the question so framed was not truly stated; the question was simply this: Holland is determined to be your enemy at all events; the only choice therefore left to Great Britain, is, whether she would prefer having Holland an open or a secret foe.

Other grounds of impracticability had been warmly pressed in argument, as naturally arising from the treaty entered into by the neutral powers, for the protection of their commerce, to which treaty the States General, noble Lords have affirmed, is a contracting party, and of course under its protection. Predictions of a very extraordinary tendency had been plentifully dealt out upon that supposition; such as that Russia, and the other contracting powers, would be naturally led into the war; and several other predictions, or apprehensions of a similar nature. He did not pretend to enter minutely into those circumstances, nor think it necessary to descend into the probability, or improbability of what Russia might or might not do; but if he understood the noble Lord, who spoke to this point, he believed it was sufficient to observe, that the terms of the armed neutrality had nothing at all to do with the present measure. The armed neutrality, he understood, though he did nor pretend to speak from his own knowledge, related only to the protection of a free navigation. It neither respected any transaction in which the contracting parties might be concerned, as powers in a state of common amity, and of course, as he had frequently observed in the course of his

obſervations, not relative to a free navigation, much leſs to the breach of previous ſubſiſting treaties with other powers. On the contrary, he underſtood, that all ſubſiſting treaties, previous to the treaty of neutrality, were expreſsly excepted; ſo that upon the whole, as we had no choice relative to Holland, but that of having her as a ſecret inſtead of an open enemy, and as the ground of our difference with that republic, whether in reſpect of the treaty with our rebellious ſubjects, or the breach of the treaties already ſubſiſting between her and Great Britain, were totally unconnected, and diſtinct from the treaty entered into by the neutral powers for the protection of their commerce, and for the preſervation of a free navigation; he truſted that he had ſatisfactorily proved to their Lordſhips that whether the practicability of the war was certain, its juſtice and expediency had been clearly and moſt unqueſtionably made out.

His Lordſhip conclued with obſerving, that as the addreſs moved by the noble Viſcount neither did nor was meant to perclude a farther and fuller diſcuſſion, nor to bind a ſingle Lord who might ſupport it with his vote that day, he ſhould of courſe be againſt the ſubſequent motion moved by the noble Duke.

Lord *Camden.*

Lord *Camden* ſaid, he had long ſince reſolved never more to trouble their Lordſhips on any part of the ſubject which would of courſe neceſſarily mix and force itſelf into the diſcuſſion of the queſtion now before the houſe; he meant the American war, including its various circumſtances and neceſſary relatives. He was long ſince convinced it was to no manner of purpoſe for him to take up any matter in that Houſe upon adverſe ground. He had repeated experience how nugatory it would be, as it had always hitherto proved, to come there as an opponent to the meaſures decided upon by miniſters, ſupported as they had uniformly been by the moſt decided majorities in that Houſe. There was, beſides, the leſs temptation, and the fewer hopes upon this occaſion, as the ſubject of the preſent debate had been ſo amply diſcuſſed, upon a motion made laſt year, by his noble friend near him (Shelburne). Before he proceeded, therefore, to ſubmit his poor opinion to their Lordſhips, he would beg leave to premiſe, that whatever he might offer was by way of advice to thoſe whom his Majeſty had entruſted with the conducting the affairs of government, in hopes that it might make a ſuitable impreſſion; and to expreſs his wiſh, that as they were ſufficienly ſtrong and powerful to carry any meaſure,

ſure, that they would adopt that which ſeemed moſt ſuited to the dignity and honour of the nation, and to the advancement and preſervation of its intereſts.

It was for this reaſon, and this only, he roſe. He roſe from a call of duty, for the laſt time, and whatever might be the event of this final effort to ſave his country, at leaſt to mitigate her diſtreſſes and misfortunes, he ſhould retire from his fruitleſs attendance in that Houſe with this conſolation, that he had diſcharged his duty to the beſt of his poor abilities, ſo long as it promiſed to be productive of the ſmalleſt or moſt remote good; and that he declined giving their Lordſhips or himſelf any further trouble, when hope was at an end, and when even zeal had no object which could call it into activity. Looking back on former tranſactions, he had great reaſon to lament that he did not form the reſolution earlier, or that ſome circumſtance had not aroſe which might have been the means of preventing him from engaging in ſo ineffectual a ſtruggle. Either event would have freed him, as well as many other noble Lords, from much chagrin, and a ſeries of the moſt mortifying diſappointments, ſtill the more highly aggravated. becauſe they involved in them conſequences which ſeemed to him to tend, if not directly and inevitably lead, to the ruin of his country.

The noble and learned Lord who ſpoke laſt, with his uſual ability and dexterity in debate, had, as he ſaid, brought the queſtion within a narrow compaſs. He had indeed within a very narrow compaſs! He had reduced it to a mere queſtion of order, out of which he had endeavoured to entirely exclude the formal, as well as ſubſtantial merits of the ſubject matter of debate. The learned Lord ſaid, it is nothing to the preſent queſtion, whether the meaſure was practicable, whether it was unjuſt, or whether it might prove ruinous to the nation; but it was merely a point relative to the regularity of their Lordſhips' proceedings, whether the addreſs moved by the noble Lord in the green ribbon ſhould be entertained, or a negative be put upon that moved by the noble Duke? This, he confeſſed, was a curious method of coming to a deciſion upon any queſtion, and upon every queſtion; the regularity of their Lordſhips' proceedings were to be preſerved at all events, though the ſalvation of the nation might eventually depend upon their being diſpenſed with in the particular inſtance.

But if the doctrine itſelf was not to be impeached, how did the learned Lord prove its orthodoxy? By the moſt extraordinary

traordinary and novel kind of proof imaginable, where proof is deemed neceſſary. The noble Lord ſays, upon his own authority, that there is not a ſingle precedent exiſting, where a royal meſſage, or other communication from the throne, has not had the preference, or where any other matter has been introduced into, or mixed with the matter ſo communicated. He begged leave to obſerve, that this was no more than a mere unauthenticated aſſertion of a noble Lord in his place: that however confidently the aſſertion might be urged, and with however loud a voice and emphaſis, it could paſs, or be received, for no more than it imported; a belief, opinion, or *dictum*, not binding, nor capable of bringing home conviction to any one noble Lord, at either ſide of the Houſe, who heard it. He, for inſtance, upon equal credit, and equal authority, was intitled to ſay, that he was ready to aſſert, or believed, which was really the caſe, that there were many, very many precedents, in the records of Parliament, where other matters were proceeded upon previous to the taking royal communications and meſſages into conſideration. Here then his and the learned Lord's contrary creeds and aſſertions ſtood in exact *equilibrio*; and it was conſequently incumbent upon the learned Lord, who made the firſt aſſertion, either to prove it from parliamentary documents, their Lordſhips' Journals on the table, or to confeſs, that his aſſertion ſhould be conſidered merely in the light it deſerved; an aſſertion unſupported by evidence of any kind whatever, and ſolely reſting upon that kind of authority. If his Lordſhip ſhould therefore refuſe that ſpecies of proof which facts when denied or controverted neceſſarily require, this would, he truſted, amount to a *prima facie* refutation of the fact as ſtated, and of every argument raiſed and deduction drawn from its ſuppoſed exiſtence. It was indeed the only colour of argument which the noble Lord ſeemed willing to truſt to; and which, if it ſhould fail him, opened the field of debate and free diſcuſſion, and let in the Houſe to enter into a full inveſtigation of the ſubject, upon the grounds of juſtice and expediency, not contrary, but agreeably to the ancient eſtabliſhed uſages and cuſtoms of Parliament.

The learned and noble Lord had, it was true, followed it with another argument, pretty nearly of a ſimilar complexion and import; for, conſcious that the former could not ſtand the teſt, his Lordſhip had recourſe to one preciſely of the ſame ſize. Said the noble Lord, " the meaſure ſanctioned by the King's name is to be conſidered as the meaſure of miniſters; and

and while it would be extremely indecent, as coming under that ſanction, to poſtpone its conſideration, or controvert its propriety, miniſters are nevertheleſs reſponſible to the Parliament and public; and the motion made by the noble Duke, or any other motion of a ſimilar tendency, may, as ſoon as the anſwer moved is agreed to, or at any future period, be taken up *de novo*, their Lordſhips not being bound by the preſent propoſed vote, no more than if it had never paſſed that Houſe." This was, indeed, going a great length, and was ſuch a mode of reaſoning as the learned Lord, with all thoſe powers of an advocate, which he was known to poſſeſs in ſo eminent a degree, would not, he was perſuaded, be able to maintain.

Here there were two objects for their Lordſhips' conſideration. One was the prerogative of the Sovereign to make war, which no man diſputed; the other, the exerciſe of that prerogative, which the learned Lord had acknowledged was preſumed to be exerciſed by advice. In what ſhape then did the queſtion come before the Houſe, but that the ſame perſons who adviſed the meaſure, likewiſe adviſed the meſſage; and that their Lordſhips were called upon to give their approbation, not to what his Majeſty had perſonally directed to be carried into execution, but what he had by the ſervants of the crown been adviſed to do. The noble Lord was at liberty to take his option—either to accept of a perſonal compliment to the Sovereign, for having acted as he had done, in conformity to the conſtitutional advice of his ſervants; or conſidering the meaſure merely as a miniſterial one, open to that general ſpecies of diſcuſſion to which every meaſure ſubmitted by them to Parliament is always ſubject.

He begged their Lordſhips, however, to look a little further, and turn their attention from mere words to things. His Majeſty's miniſters adviſe a declaration of war, or, which is in ſubſtance the ſame thing, a manifeſto, accompanied with orders for iſſuing letters of marque and repriſals. They further adviſe his Majeſty to communicate this to his Parliament; but *cui bono*? for their Lordſhips are not to deliberate; they are not to ſeek any further information, or mix what the learned Lord is pleaſed to call extraneous matter.—Nothing like it :----according to the language of the noble Lord, they are implicitly, without heſitation, doubt, or enquiry, to echo back the very words of the meſſage, in almoſt *totidem verbis*, and containing the moſt full and unreſerved approbation of the meaſure thus communicated in all its parts. The learned Lord's abilities were unqueſtionable; his powers of

of debate universally acknowledged; but there were many things to which he was not equal; he could not reconcile impossibilities; he could not put a face upon what was absurd in itself, or contradictory, and make it wear the appearance of reason, argument, and truth. It was not in the power of the most willing and zealous advocate, nor the greatest orator, to do it. To address their Lordships upon a measure previously determined upon, and which was said it was indecent to discuss, was a farce—it was monstrous and contained in it every appearance of mockery and premeditated insult.

Yet if the attempt itself was provoking, and had still been further aggravated by the reasons urged in its support, he would, for an instant, after he had stripped the question of the cloud of words and phrases in which it had been so ingeniously wrapt up, point to the consequences.

The matter, when stripped of its artificial cloathing, was this:—The conduct of the States General had been such, as, in the opinion of ministers, to make it necessary to issue letters of marque and reprisals; the evidence on which ministers had thought proper to prove this pretended necessity was on the table. The question then was this; shall those who do not, as well as those who do, think the evidence sufficiently cogent to justify the measure, aggree to it? and shall the dissentients in opinion wave all opposition? O! to be sure, says the noble Lord; "You are bound to do it; you are bound by precedent, in the first instance; moreover the respect which you owe to your Sovereign requires it. The measure may be a very mischivous or unwise one; but that is nothing at all; you cannot according to the order of your Lordships proceedings dissent; and if you could, itself, it would be indecent and disrespectful;—but I can tell you what you may do; after the address shall be agreed to, you may then controvert the justice and expediency of what you had before only approved of for form sake."

He would not say, that those were the noble and learned Lord's precise words; but he appealed to every noble lord who heard him, if it was not their unequivocal import. Now he begged leave to say, that no argument or reasoning it was possible for the mind of man to conceive could be more fallacious or unfounded; for how would the case stand? That war had been denounced or made against the republic of Holland during the recess of Parliament; that Parliament, upon being made acquainted with it, approved of the measure, and consequently bound themselves and the nation to all the consequences of a state of hostility with a powerful nation: but

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for all this, the noble and learned Lord had a *salvo* in either event, be the meaſure right or wrong; for in the firſt place, the order of their lordſhips' proceedings obliged them to echo back the meaſure in the higheſt terms of approbation; and if the nation ſhould, in the event, be ruined, or undone, the people would have the ſatisfaction of calling upon miniſters, whom his lordſhip had deſcribed as ultimately reſponſible for the conſequences.

After endeavouring to ſhew the extreme abſurdity and fallacy of the learned lord's arguments, and holding them up in a great variety of lights, to evince their ſophiſtry as well as expreſs contradiction, his lordſhip ſaid, ſince he was up, he would conſider the main queſtion ſhortly, in ſome of its principal relations.

He would not pretend to ſay, taking all the treaties ſubſiſting between this country, how far the *caſus fœderis* did or did not actually exiſt. It was certain, from the manner they were drawn up, as well as the ſeveral occaſions which gave them birth, that they were extremely complicated, and difficult to be at the ſame time ſpecifically and equitably interpreted; not but he thought Great Britain and Holland, if they came with a willing mind and in a good temper to qualify their reſpective claims, the ſeveral ſeeming contradictions which pervaded the different parts of thoſe treaties might be reconciled, and a concordance effected between the whole, ſo as to guard the rights, claims, and reaſonable and equitable expectations of both. Be that as it may, the preſent queſtion, ſo far as the juſtice of the meaſure was concerned, muſt ſtand or fall by thoſe treaties, ſuch as they were.

By the treaty of 1674 it was expreſsly ſtipulated, that Great Britain and Holland ſhould be at liberty to carry all kinds of goods and merchandiſes, either of their own growth or produce, or belonging to any other power, without let, hindrance, or moleſtation, under any pretence whatſoever, except the particular articles therein ſpecified, under the deſcription of military ſtores, which were very different from what was at preſent conſidered as military ſtores or contraband, and that even to an enemy actually at war. This, however ſevere it might appear, or harſh it might ſound, beyond a poſſibility of redreſs, upon the terms of the treaty, was the baſis of all the ſucceeding treaties; and if broken or violated, unleſs in ſuch inſtances as had been ſubſequently provided for, moſt clearly bound Great Britain, or if the latter, urged by a neceſſity not in being, foreſeen, or provided

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for, at the time of making the treaty, refused to abide by it, such a conduct on our part would instantly dissolve the obligation on which the *casus fœderis* was supposed to exist, nay, only upon which it could at all exist.

When their lordships, therefore, came to decide upon the present measure, as a measure of state, it was a duty incumbent upon them to have every paper necessary to a full information on the subject, as it really stood. In the first place, the treaties themselves, but more particularly the several transactions from the first beginnings of this business, such as the complaints of the Dutch, on account of our seizing their ships and vessels, the confiscation of the goods and merchandises belonging, or supposed to belong to the powers at war with us, aboard those ships; in short, every matter respecting the opinions entertained in Holland. On the contrary, their Lordships had not a tittle of information, but a mere bead-roll of our complaints, as made, from time to time, by our minister at the Hague. In his opinion, their lordships, before they came to a solemn determination upon so important a question, which might in its consequences involve this country into endless misery and ruin, ought to trace the disagreements between the courts of London and the Hague to their origin, in order to know where the fault began; if on our part, that speedy satisfaction might be given; if not, that be the event what it would, we might endeavonr to reconcile ourselves to that republic, upon the most persuasive of all arguments, that of unavoidable necessity.

Most clearly, in his opinion, if the treaty of 1674 was not binding upon Great Britain, none of the rest could be binding on Holland; and when the noble Viscount, who moved the address in answer to his Majesty's message, recounted the different refusals of the States General to comply with the several requisitions made by the British court, for the performance of subsisting treaties, he began at the wrong end. His lordship should, in order to give the least degree of weight to his arguments, have proved, that we had inviolably adhered to the terms of that treaty in all its parts, so far as it depended upon us, or if any deviation had happened, to promise and undertake that the cause of complaint should be immediately and effectually removed.

He had no other information on the subject, for his own part, but that species recommended by the noble lord in the green ribbon, namely, the foreign Gazettes. This authority was either no authority, or it was such as ought to be relied

relied on. He was to presume the latter; otherwise the noble Viscount would not, he supposed, have recommended such information as might be found in the Dutch and other foreign Gazettes to direct their lordships' determination. Being ready to take this information to be true, after it came so highly sanctioned to him, he must observe, that the Gazettes were very full and explicit on the subject. They were stuffed with reiterated complaints, both from the States General and people of Holland, and contained catalogues of the repeated insults received by their flag, as well as the innumerable injuries on the property and persons of the subjects of the republic. If he understood right, those complaints were as frequent before the requisition made by the British court, for the succours stipulated to be furnished by the treaties of 1678 and 1716, in case either power should be attacked, as at any time since. These were points which, in his apprehension, called for the most full and serious discussion, being of a nature so intimately connected with the measure then under their lordships' consideration, that it was impossible, with any propriety, to proceed a single step further in the business, consonant to the invariable principles of honour and justice, without being previously informed of every material circumstance respecting the conduct of Holland on one hand, and of our ministers on the other.

Many arguments, and some seemingly specious ones, had been used respecting the treaty on the table entered into by the pensionary, Van Berkel, and Mr. Lee, the congress delegate.—It was at one time called a perfect and complete treaty, binding upon the parties; it was again represented as a treaty, founded on a possible contingency hereafter to happen, before the condition could operate; and yet, however repugnant the latter comment might be to the former, the contingency was supposed, though ever so absurdly, to express or imply a positive, unconditional undertaking. He should be sorry to waste his own, or their lordships' time, in endeavouring to reconcile or expose the manifest absurdity resulting from such a stile of conclusion. The treaty was intended either to take effect immediately, or it was contingent; if contingent, it was preposterous to describe it as an agreement immediately binding; if immediately operative, it could not be contingent, but must have instantly sprung into being, and still continue in existence; yet nothing had been urged, either in the shape of fact or argument, tending to shew that any one step had been taken by the governing

or any ſubordinate power in Holland, which betrayed either directly or indirectly any intention in the States General of an hoſtile nature; that they knew any thing of the intrigues of Van Berkel, much leſs had determined to ratify and confirm, as an act of the Sovereign, what had probably been the mere unauthorized act of Van Berkel himſelf, ſupported by ſome of the magiſtrates of the city of Amſterdam, who were well known to be in the French intereſt.

But ſuppoſing, ſo far as the treaty went, that it was a complete one, before any concluſion was drawn, he thought it behoved thoſe who were perſuaded of its completion, to point out how far it did operate, and the perſons whom it was ſuppoſed to bind, or could bind. Did it bind the ſtate or republic? He believed no perſon would venture to affirm it did. Did it even bind the province of Holland? That yet remained to be proved. Who then did it bind? For aught he could learn, from any thing that appeared to the contrary, it neither did or could bind any other perſons, but merely the contracting parties whoſe names were ſigned to the inſtrument.

While he was ready to condemn miniſters for their general conduct, he was not ignorant, that to ſteer clear of difficulties, in the preſent critical ſtate of this country, required much dexterity and addreſs. The treaty of 1674 was productive of much embarraſſment; and though he perfectly agreed with his noble friend near him (Shelburne) that the late Earl of Chatham acted with great caution, he would add, however, that to his certain knowledge, he acted, conſidering the embarraſſments ariſing from the treaty of 1674, with peculiar addreſs. Like a wiſe and ſpirited miniſter, convinced of the neceſſity of preventing our enemies from being ſupplied with the means of prolonging the war, he perhaps ſometimes deviated from the ſtrict letter of that treaty, from motives of ſound policy, dictated by the particular exigency of the times. He remembered, that his lordſhip had frequently conſulted him on the occaſion, having then the honour of being one of the law officers of the crown: (Attorney General) and he recollected, that the neceſſity of ſuch a conduct was ſtated with candour and openneſs; that every poſſible care was taken to give the complainants ſatisfaction; that fair words were returned when nothing more could with propriety be given; that a kind of compromiſe was frequently preſſed, and that the reſult was rather a temporary ſuſpenſion of all the treaties, than any thing like a demand of a rigid performance of them

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on either side. This was the mode by which that great statesman conducted the affairs of this country, to the great end which he proposed to himself, that of humbling the power of France, and breaking and dissolving the compact between the several branches of the House of Bourbon. In the very zenith of his power, in the very flush of victory, he had many and strong pretences, if not real provocations, for employing the then irresistible force of this country against the property and possessions of the Seven United Provinces. But he was too magnanimous, too wise—he judiciously qualified the claims of this country, as well as set limits to the unreasonable demands of that republic. He acted with moderation, resolution, firmness, and justice. He had not only Holland to manage, but the northern kingdoms, who were at the time, independent of their extreme jealousy of the growing naval power of Great Britain, rather inimically, or at least unfriendly inclined towards us, particularly Russia and Sweden; yet, among such a variety of difficulties, so many adverse views, and contending interests, so many real causes given, and more pretended; such were the great abilities of that unrivalled statesman, that he avoided a rupture; and though Holland might in some instances think herself not perfectly well treated, yet, upon the whole, she found, that no hardship, or colour of hardship, was imposed upon her, but what merely arose from political necessity. On the contrary, what was the conduct of the present ministers? Before the commencement of hostilities with France, or Spain, they ordered our ambassador at the Hague to present a most insolent memorial, containing threats of a most unprecedented nature, when addressed to an independent state of any description; but when addressed to an ally, to the last degree provoking, arrogant, and indecent. It was to this memorial, more than to any other circumstance whatever, that he attributed all the subsequent conduct of the republic. The noble Lord in the green ribbon represented the people of Holland as divided by parties, and distracted in their public councils. He represented them as governed or misled by a Gallo American faction. The noble Viscount might be well founded in his assertion; but if there was a Gallo-American faction, which, unhappily for Holland and Great Britain, guided the councils of the republic, contrary to the mutual benefit, advantage, and interest of both, which in his opinion could not be separated without manifest injury to each, he would ask the noble Viscount, or the noble and learned Lord, or any other

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of his Majesty's ministers present, who or what it was that created this Gallo-American faction?—most clearly, themselves. Their arrogance and insolence it was that furnished food for discontent, and furnished arguments to the secret and open friends of France, in the republic, to inflame the minds of their fellow-subjects against the government and people of Great Britain, and to aggravate any part of our conduct, so as to persuade the Hollanders, that the insults and affronts daily put upon them tended to establish an universal dominion on the ocean, and to lead to restrictions upon commerce, suited to the interests and well known ambition of the English nation, who could bear no rival in trade, and who would, should she prevail in her present contest with America, derive such an accumulation of naval force, as to enable her to give law to the whole world on that element.

The very arguments so strongly insisted upon by the noble Lords who supported the address, allowing them to have been relative, justified more and more the conclusions he had been drawing, and clearly demonstrated, that if there was any powerful faction, or Gallo-American faction in Holland, sufficiently strong to promote the interests and views of France and America, in preference to those of Great Britain, it was the British Ministry alone who were the cause of it.

For his own part, though he was strongly induced to believe, that France and America had many very powerful and zealous friends in Holland, he could not be persuaded, that their influence extended the length the noble Lord in the green ribbon endeavoured to induce their Lordships to believe it did. The Dutch were a wise and politic people; commerce, and the advantages derivable from it, were the uniform objects of their political pursuits. Their safety and independence naturally led them to look towards Great Britain as their only best friend and protector, against the encroachments, or other more formidable views or attempts which might be made upon them, by the great powers on the Continent, who possessed territories immediately in their neighbourhood. They had another motive, and a most well-founded one, for trusting to the friendship, assistance, and alliance of Great Britain, in preference to any other, which was founded in the unerring and immutable principles of sound policy, and national wisdom; and it was this, that Great Britain might be safely depended upon; because, besides the ties of treaty and alliance, she would be led to assist Holland on her own particular account; because, in case Holland should fall, such an event would sooner or later lead to her own destruction. He therefore

fore heartily coincided in the ideas of his noble friend who ſpoke lately, that the intereſts of Holland and Great Britain were the ſame; the advantages to be derived from any aſſiſtance which might be given to either mutual; and their views exactly correſpondent, the ſecurity of their independence, and the extenſion of their commerce.

Thoſe conſiderations (of which that republic, renowned for its wiſdom, could not be ignorant) furniſhed him with additional reaſons to ſuppoſe, that the governing power of Holland never meant to adopt any meaſures ſufficient to juſtify the manifeſto. There were, in every ſtate, men of a particular frame of mind; enthuſiaſts, he would ſuppoſe, that would be glad that the bleſſings or advantages derived from their own form of government ſhould be extended to other nations, and at length become univerſally prevalent; of this deſcription he made no doubt but there might be ſome in Holland. Many might be ſeduced, by the proſpect of gain, and a more extenſive commerce, to wiſh well to the independent States of America; and others again might have conceived a predilection for France; but allowing all this to be true, he was ready to maintain and prove, that if it had not been for the precipitate, violent, and paſſionate conduct of our miniſters, in reſtraining, or rather totally interrupting and ſuſpending, the Dutch commerce, before ever we could, by the aſſiſtance of the moſt ſubtle invention, frame a pretence for acting as we have done, no war, under any form then exiſting in Europe, or between the ſubjects of any of the European ſtates who poſſeſs dominions in America, or elſewhere out of Europe, the factions in Holland, whether republican, or Gallo-American, could never have pretended, nor would have dared to ſhew the leaſt predilection for France or America! Nor had they yet aroſe to ſuch a degree of ſtrength, even under thoſe unfavourable circumſtances he had been deſcribing, as to be able to control and direct the councils of the republic, contrary to its true intereſts, and againſt the faith of the engagements ſubſiſting between England and Holland.

Upon the whole, therefore, of the juſtice of the meaſure under their Lordſhips' conſideration, as well in point of the facts ſtated in the papers on the table; the provocations given on our part; and the conduct of Holland under thoſe repeated inſults and acts of arrogance and oppreſſion towards them, as from the reaſons of policy, and the nature of the connection between this country and the Seven United Provinces, he was firmly perſuaded, that the reſolution of going

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to war agreeably to the terms of the manifesto, ought to be immediately, if not rescinded, at least, taken into reconsideration, agreeably to the motion made by the noble Duke; and if no better grounds of hostility should be the result of a more particular enquiry, that their Lordships would be bound to order immediate reparation and satisfaction to be given for the injury already sustained by Holland, and of course to desist from a prosecution of further hostilities.

To the expediency of the war little remained to be said; our present situation was such as to render any argument unnecessary. We were already over-matched, and Holland, thrown into the opposite scale, would, he had every reason to believe, be decisive of our fate; but was Holland to be the last enemy we would have to contend with in this already unequal contest?—He feared not;——Russia, if the foreign Gazettes spoke truth, and he had a right to presume they did, on the authority so often quoted in the course of the debate, the authority of the noble Viscount in the green ribbon—Russia had already said more than Holland even pretended to claim under the right of subsisting treaties. She published a new code of maritime law, which was to bind all the powers of Europe, as well neutral as belligerent, and invited those of both descriptions to accede to it, by which it was ordained, that free bottoms made free goods.

France and Spain had already becomes parties; Holland had acceded to it, and her accession, if the foreign Gazettes were to be relied upon, was accepted of, and so had the other nothern powers.——If then "free bottoms" made "free goods," where did we stand, according to the tenor and professed intention of this treaty? But that, whether Holland was, or was not bound, by the treaties subsisting between Great Britain and her; Russia, Sweden, and Denmark, were free to act as interest or convenience might suggest. It was said, indeed, that this treaty excepted the previous particular engagements of the contracting parties among each other: and that subsisting treaties were an exception to the general rule—granted. But then the basis of the neutral treaty was clearly, that "free bottoms" made "free goods" in all cases, where there was no other treaty existing, contrary to that between the parties, consequently the very principle on which we were now contending for in respect of Holland, that of availing ourselves of our situation, as well in respect of that country, as the northern powers of Europe, was totally at an end.—He would suppose, for argument sake, that Holland, from her prior engagements with this country, was precluded

precluded from the benefit ſhe might otherwiſe derive from acceding to the armed neutrality;—what would that tend to?

The Dutch, who were the great carriers of northern Europe, would not be permitted to carry on that ſpecies of commerce.—But would this prevent Ruſſia, Sweden, and Denmark to tranſport the commodities and native growth of their own country?—The anſwer was ſpecific and direct to this: by no means.—The commodities formerly tranſported by Holland from the place of growth would then be carried in bottoms belonging to or employed by thoſe reſpective countries—but upon what terms, or under what conditions, and ſort of protection?—Upon the terms that "free bottoms" make "free goods," and under the protection of the aggregate force of the whole armed neutrality, who were bound to each other to aſſiſt in the common protection of all commodities carried in free bottoms, according to the engagements entered into by previous exiſting treaties.

This was a ſtate of facts, and a ſtile of argument, which he did not expect to hear controverted, or replied to.—If ſo then, what did it amount to fairly, but this:—That the only advantages we derived from our ſituation of preventing our enemies being ſupplied with naval ſtores by the northern crowns would completely be at an end: For in that caſe thoſe rights, real or pretended, which we had hitherto continued to exerciſe, that of ſtopping and ſearching the ſhips of neutral nations, and under ſome circumſtances ſeizing, and confiſcating the property ſo ſeized, and in every inſtance ſearching, if carrying any commodity deemed to come within the deſcription of naval and warlike ſtores, would come to be diſputed, and we ſhould be then obliged to meet and contend with, not only France, Spain, America and Holland, but likewiſe with the united force of the reſt of the powers which conſtituted or had acceded to the armed neutrality.

This was ſuch an eventual ſituation, as the greateſt political zealot would not be prepared for, or recommend to encounter.—He was perſuaded, it was ſuch as none of their lordſhips, if the event appeared to be a probable conſequence of the preſent meaſure (which he much dreaded) would ever conſent to.—In the preſent ſtate of things, and on the grounds he had argued the point, the probabilities tended to create ſtrong fears, that ſuch an event would be the reſult of a rupture with Holland, and of courſe of transferring the greateſt part of the Carrying trade, till the

public tranquility of Europe ſhould be re-eſtabliſhed, to Ruſſia, Sweden, and Denmark, the reſpective places of growth.

He begged, before he ſat down, to ſubmit the probable conſequences of the rupture with Holland in another point of view, though ultimately tending to the ſame concluſion. It was ſaid, by the noble Viſcount, early in the day, that the armed neutrality amounted to no more than a conditional, temporary compact, which bound none of the parties longer than they thought fit, or they found it convenient to adhere to it:—of courſe, that it was diſſoluble at pleaſure. He by no means underſtood the treaty in that light.—On the contrary, it appeared from its tenor, not only to be ſpontaneouſly binding, but compulſory as to the object; for although one of the contracting parties might withdraw, and free himſelf from the particular conditions of ſupport, ſo far as the terms would directly or indirectly affect other powers, not parties, ſtill the remaining powers, who ſhould continue to adhere to the neutrality, would, notwithſtanding, look upon themſelves called upon to aſſiſt in carrying it into faithful execution, and at the ſame time it would not be diſputed that they would be willing and able to give it effect.—What was the caſe in the preſent inſtance? The neutral powers had acceded to the new ſyſtem, or new code of maritime law, promulged or propoſed to the other powers of the north of Europe in general. Every neutral power but Portugal had already acceded to it, ſo had France and Spain. Great Britain, of all the belligerent powers, only refuſed her aſſent, and the reaſon was evident; becauſe the regulations contained in that code were hurtful and injurious to her, and not ſo to the other powers at war; ſo that no other alternative remained, but that either the treaty of armed neutrality muſt be diſſolved, or Great Britain, refuſing to acquieſce in the regulations, would be involved in a war with the ſeveral ſtates, which formed this extraordinary confederacy.

Connecting therefore all thoſe circumſtances, with their different relations and probable conſequences, further ſtrengthened by what had been ſtated by his noble friend (lord Shelburne) who ſpoke lately, that by the renunciation made by Sir Joſeph Yorke, in 1779, of all ſubſiſting treaties between Great Britain and Holland,—the maxim that "free bottoms make free goods," while the former removed the exceptions, and entitled Holland to all the benefits or advantages which ſhe might derive from the treaty, taking it in its moſt extenſive ſenſe, the latter protected the property of the republic,

republic, so long as Great Britain and Holland remained in a state of peace.

This being the true state of the question between this country and the United Provinces, he could discover, without pretending to much political sagacity, the real drift and tendency of the present measure, so far as it was a question of state, respecting the present or future conduct of foreign powers.—Ministers were not ignorant of the truth of the arguments he had now resorted to;—they knew that they dare not openly infringe the terms of the armed neutrality, nor defeat the intentions of those powers which had already acceded to it, under the pretence of a breach of treaty committed by Holland; and why so? because they were conscious that no such violation of treaty had in fact taken place—They did, nor could not forget that they were the first aggressors, and that they seized the Dutch property long before there could exist a breach of treaty, or a pretence for it, that was before any war broke out in Europe. Under those embarrassments, they were fortunately presented with what they thought proper to interpret into an aggression, totally unconnected and independant of the provisions and objects cantained in the new code of maritime law, and determined to avenge themselves upon Holland, for what they had themselves, by their ignorance and arrogance, been the real cause, and sole authors of.—But however fraught with artifice and disingenuity this device appeared, he much doubted whether it would receive so ready a saction from the members of the armed neutrality, and of the court of Petersburgh, which first formed it, as it seemed to receive in that House. On the contrary, truth would prevail, and be weighed against artifice and evasion.—Ministers began at length to perceive the fatal consequences which were about to arise from their own misconduct—They knew that Holland was just upon the point of acceding to the armed neutrality, and that persons or deputies had been sent from the Hague to Petersburgh, expresly for the purpose of notifying the accession of the republic in due form; nay, for ought he knew, that accession had, or was to have taken place on the very day, perhaps, but if not, within a day or two, of the publication of the manifesto on the table.—Thus by this flimsy pretext ministers flattered themselves that they should at once cover their own blunders, and under the pretence of detecting the Dutch in having entered into a treaty with the American Congress, deprive them of that security and protection which they would, but for

 this

this circumſtance, be clearly entitled to as a member of the armed neutrality.—In ſhort, they would now endeavour to conceal or palliate their own guilt, to gloſs over their own impolitic, violent, irreſolute, and unjuſtifiable treatment of Holland, which proved the cauſe of driving that country from her connections with this, and of working her up into a ſtate of indifference, if not of enmity, by ſeducing the nation into a quarrel totally miniſterial, and which the people of Great Britain had nothing to do with, in point of either juſtice or expediency. But the attempt, he preſumed, would prove as deſtitute of ſound policy as it was equally fool hardy and unprincipled. Ruſſia, if previouſly bound, would ſee how far the reaſons contained in the manifeſto were founded, and would conduct herſelf accordingly.—She would draw the line, when judging of the conduct of the Britiſh miniſtry, that ſeparated or diſtinguiſhed an act of real neceſſity, from a meaſure of mere convenience, and would impartially determine how far the treaty entered into between the penſionary Van Berkel, and Mr. Lee, the Congreſs delegate, could be fairly preſumed, in fact or deduction, to bind the governing power in Holland.

He begged pardon, but he thought he could not ſit down under an idea of having fully diſcharged his duty, without making an obſervation or two upon what had fallen early in the debate from the noble lord in the green ribbon.

Holland had been repreſented by the noble Viſcount as in a ſtate totally defeceleſs at home, and extremely vulnerable in the various poſſeſſions ſhe held in the eaſtern and weſtern quarters of the globe —He ſhould not pretend to contradict his lordſhip, becauſe he was not ſufficiently informed on the ſubject;—but ſo much he would riſque, that every advantage we derived from the war preparation we were in, could at beſt promiſe us no more than a ſhort-lived, temporary ſucceſs. The Dutch were naturally a brave people; they had proved it in a great variety of inſtances; and hiſtory enabled him to pronounce with confidence, that they had upon many occaſions ſhewed themſelves inferior to none in the qualities requiſite to conſtitute the ſeaman or ſoldier. It was natural that he ſhould be prejudiced in favour of his own country, and therefore unwilling to allow them an equality in reſpect of courage or conduct; but after that exception, not even zeal or prejudice could induce him to deny that at ſea their courage and ſkill ſtood unqueſtioned; and that they were at leaſt a match, if not ſuperior, with an equality of

of force, to any other power in Europe *but* Great Britain. A Van Trump, a De Ruyter, &c. proved what heroes Holland had produced.—The people ſtill continued the ſame in every reſpect; they poſſeſſed the ſame power, an internal means and reſources of defending themſelves, or annoying their enemies.—*Other* VAN TRUMPS might ariſe, and ſtruggles and combats equally bloody, obſtinate, and doubtful in the event, might be the conſequence of the preſent meaſure; ſtruggles of ſuch a nature, and claims of victory ſo contrary in their nature, as not to have been determined at the end of a century which of the combatants were vanquiſhed or worſted, or which had proved victorious.

He hoped it would not be improper to add a ſingle word on the nature of the approaching war, as it had ſtruck him: If our great exertions were to be directed to the defence of our ſouth-weſtern coaſts, to the defenſe of our channel, and the protection of our outward and homeward-bound trade fleets, he begged to ſubmit to their Lordſhips, the dangerous, at leaſt precarious ſtate of the eaſtern coaſts of the kingdom. Beſides the ſafety and ſecurity of our commerce to the Baltic, the North, and our coal trade, he ſubmitted to their Lordſhips what would be the ſituation of the whole of the commerce carried on by the way of the Thames. Moſt certainly either the whole of that commerce, which included half the commerce of the whole Iſland, muſt be deſerted, or a ſquadron muſt conſtantly be ſtationed in the Downs, for the ſafety and protection of the ſhips paſſing and repaſſing through the mouth of that river. If then a ſquadron, and a ſquadron of conſiderable force muſt be deſtined for that ſervice, it was clear that not only the preſent meaſure would add to our nominal enemies, but that it would in fact *weaken* our *efficient* defence, becauſe it would *lock up* a part which might be otherwiſe employed *againſt France* and *Spain* both in *Europe* and *elſewhere.*

LORDS' PROTEST.

Die Jovis 25o. Januarii, 1781.

It was moved, that the motion for an adreſs be poſtponed, in order that the Houſe may taken into conſideration another motion "for an adreſs to his Majeſty, that he would be graciouſly pleaſed to give orders, that there be forthwith laid before this Houſe copies of all the treaties lately ſubſiſting between Great Britain and the States of the Seven United Provinces, and alſo of the correſpondence between his Majeſty's miniſters and his late ambaſſador at the Hague, and of all memorials, requiſitions, manifeſtos, anſwers, and other papers which

which have paſſed between the two courts, as far as they relate in any reſpect to the preſent rupture, or to any miſunderſtanding or complaints which have exiſted between the two nations ſince the commencement of hoſtilities between Great Britain and the provinces of North America.

Which being objected to, after long debate, the queſtion was put, whether to agree to the ſaid motion?"

It was reſolved in the negative.

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Diſſentient,

1ſt. Becauſe we cannot conſent to involve this and other nations in all the horrors of war, but upon the cleareſt proofs both of juſtice and neceſſity; and it would be peculiarly inconſiſtent with our public truſt, without ſuch evidence, to give parliamentary ſanction to a war againſt the ancient and natural allies of this nation.

It is on the juſtice of our cauſe, and on the abſolute neceſſity of proceeding to ſuch extremities, that we muſt be anſwerable to God and our conſciences for a meaſure which neceſſarily plunges millions of innocent people in the utmoſt diſtreſs and miſery. It is on this foundation alone that we can with confidence pray for ſucceſs, or hope for the protection of Providence.

We conceive that a careful, and above all, an impartial examination of the correſpondence between his Majeſty's miniſters and his late ambaſſador at the Hague, and of all the memorials, complaints, requiſitions, manifeſtos, anſwers, and other papers which have paſſed between the two courts, as far as they relate in any reſpect to the preſent rupture, is indiſpenſible to warrant Parliament in pronouncing whether the hoſtilities which his Majeſty has authoriſed his ſubjects to commence againſt thoſe of the Seven United Provinces are, or are not, founded in juſtice, and conſequently before they can with propriety offer to his Majeſty any advice, or promiſe him any aſſiſtance in the preſent conjuncture.

The ſudden attack which the miniſters have adviſed his Majeſty to begin againſt the property of our neighbours, failing in full confidence of peace and of their alliance with this nation, made without allowing the uſual time ſtipulated by treaties, even between enemies, for ſecuring the property of unſuſpecting individuals in caſe of a ſudden rupture, is a proceeding

proceeding which, till explained, muſt appear unwarranted by the law of nations, and contrary to good faith; nor can we, upon the bare recommendation of miniſters, approve of ſuch a conduct, or determine upon the nice conſtruction of treaties and reciprocal obligations, without ſo much as hearing what our late allies and friends have on their ſide to alledge.

But the influence of his Majeſty's miniſters in Parliament has been ſuch, as to obtain not only the rejection of a motion which has been made for this neceſſary information, but alſo to induce this great council of the nation, on a matter deeply affecting their moſt important intereſts, to give a ſolemn opinion without any knowledge of the facts on which they have pronounced with ſo blindfold a compliance to the will of the court.

2dly, Becauſe, however ſufficient the reaſon of juſtice ought to be, that of expediency may perhaps be more prevalent, and is not wanting on this occaſion.

It has been the uniform and approved policy of our ableſt ſtateſmen, for near a century, to form alliances, and to unite with the powers on the continent to reſiſt the ambitious attempts of the Houſe of Bourdon. The proteſtant republic of Holland, from the freedom of its conſtitution and ſentiment, as well as from its religion, has ever been deemed a valuable ſupport of the liberties of Europe. Twice have they been on the very verge af falling a ſacrifice to France in this cauſe, and we can never believe that their old affection to Great Britain can have been alienated, much leſs that a direct rupture with them can have become neceſſary on our part, without groſs miſmanagement in our councils. We cannot but form the moſt ſerious apprehenſions at ſeeing the three great Proteſtant and free countries of Great Britain, North America and Holland, ſo weakening each other by war, as to become an eaſy prey to the ancient enemy of them all, whenever ſhe ſhall pleaſe to turn her arms againſt them.

We are not inſenſible of the diſtreſsful ſituation, with reſpect to the armed neutral powers, into which we have been led, ſtep by ſtep, by the unfortunate American war; but as we are convinced that wicked and weak councils have been the ſole cauſe of that unhappy conteſt, ſo we are perſuaded that honeſt and able miniſters might have prevented this, amongſt ſome of its wretched conſequences.

But whilſt the ſame meaſures, which have cauſed our unexampled calamities, continue to be purſued and cheriſhed; whilſt a ſyſtem of corruption prevails, which muſt exclude

both

both ability and interity from our councils; whilst every interest of the state is sacrificed to its support, and every attempt at reformation rejected, our condition can change, but from bad to worse.

It is not for us to pretend to foretell events, which are in the hands of Providence; but if causes are suffered to produce their natural consequences, we cannot but apprehend, from the present conduct of our affairs, every danger to this country, both foreign and domestic, to which a nation can be exposed.

RICHMOND ROCKINGHAM
PORTLAND DEVONSHIRE
FITZWILLIAM PEMBROKE
HARCOURT COVENTRY
FERRERS

SECOND PROTEST.

Dissentient,

For the above reasons, and for that, instead of being convinced of the justice, necessity, or policy of a war with Holland, as we ought to be, before we give our sanction to that measure, it appears to us, as far as the information we possess enables us, to be equally contrary to the interests of both countries, and to the inclinations of all whose inclinations ought to influence the councils of either. Or such inclinations, in many respectable members of the Dutch government, we thought we saw, and we saw it with pleasure, a sufficient indication to encourage us to hope, that it is not yet too late to open a negociation, by which, if conducted with the temper, and in the language of conciliation, we may avert the evils which the continuance of this unnatural war cannot fail to produce.

With this view, it was recommended in the debates with the earnestness and seriousness suitable to the occasion, not to lose an hour in proposing a cessation of hostilities with Holland, for the purpose of meeting and cultivating a friendly disposition, of reconciling commercial differences, and for restoring that union of political interests which has been hitherto thought fundamentally necessary to the preservation of the Protestant religion, and of the liberties of Europe. The inattention of his Majesty's ministers to such a proposition, in the actual circumstances of this country, their disinclination to the objects of it, so plainly manifested by the unprecedented confiscations intended by their proclamation of the 20th of December last, the loss of so valuable an ally, the accession of so considerable

considerable a force to the formidable powers, antecedently combined against us, and the just grounds it affords to apprehend the accession of other powers to that combination, leave us no other part to take, as members of this House, after having stated our ideas of the extent of the danger, and suggested what we conceive to be the best and only remedy, than to enter our solemn protest to exculpate ourselves from being accessary to that accumulation of evils, which we foresee, and think might be, but will not be prevented.

WYCOMBE	PORTLAND
CAMDEN	ROCKINGHAM
RICHMOND	FITZWILLIAM
FERRERS	PEMBROKE.*

January 26.

The House waited upon his Majesty at St. James's with the address agreed to the preceding day, and adjourned to Monday the 29th.

January 29.

His Majesty's answer to the address of Friday was reported by the Lord Chancellor. Ordered that the Bishop of St. Davids be desired to preach before their Lordships at Westminster Abbey, it being the 30th of January.

January 30.

This day the Lord Chancellor and the House, consisting of two spiritual and one temporal Lord, attended divine service, and heard a sermon preached in Westminster Abbey, suitable to the occasion.

Adjourned to the next day.

January 31.

Returned thanks to the Bishop of St. David's, for the sermon preached by him the preceding day, at Westminster Abbey.

February 1.

Private business. Adjourned to the Wednesday following.

February 7.

Met, pursuant to their last adjournment.

Ordered, That the Bishop of Bangor preach before their Lordships on the day of the General Fast, at Westminster Abbey.

Adjourned to Friday.

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* The division did not take place till half after one in the morning, nor did the House rise till past two.

February 9.

The other private bufinefs being finifhed, the order of the day was read for hearing counfel on an appeal from a decree of the prefent Chancellor. The caufe of appeal was fhortly this: A Mifs Irwin, who was a ward of the court of Chancery, having received tho addreffes of Lord William Gordon, had confented to give him her hand, with the approbation of her guardians, and of her mother, who acted as truftees under her father's will; but the lady being under age (but twenty years old), and from certain circumftances arifing from the words of the teftator, her deceafed father, fhe came by operation of law a ward of the court of Chancery, as before obferved; the confequence of which was, that fhe could not marry Lord William without the Chancellor's confent.

On this ground the lovers, with the approbation or fanction of the parent and guardians, petitioned the Chancellor for leave to marry, which petition was heard upon the merits, and was difmiffed by his Lordfhip, chiefly for the following reafons:

Firft, As it would defeat the will, under which fhe derived her prefent fortune, the intention of the teftator, as the law ftood, being, that the young lady fhould not marry, till of full age, unlefs the perfon fhe might intermarry with fhould have a fuitable fortune, and that her own fhould be fo fettled, as to become a provifion for herfelf and children, or if not, a fuitable dower and provifion fhould be fettled and made for herfelf and children out of her hufband's eftate.

Secondly, (which was connected with the foregoing) Her intended hufband was not enabled to make any fuch provifion, having no property or fortune of his own.

Thirdly, That fo far from being able to fulfil the intentions of the will, he was fome thoufand pounds worfe than a beggar, which debt or debts were to be paid out of the fortune of the young lady, when fhe arrived at full age, as a matter of courfe, becaufe her fortune would then veft in her hufband.

Fourthly, It would tend to defeat the remainder, which was expectant on her death, in cafe fhe fhould not attain the age of twenty-one years, which gave the perfon in remainder a clear, legal, vefted title in the contingent eftate, on her death; which would be an act of pofitive injuftice, becaufe it would be diverting the remainder man of a reverfionary, or contingent eftate, without any equivalent.

And finally, it would defeat the intention, as well as legal operation of the will of the teftator, and open a door to fet afide or bar all fuch teftamentary devifes.

The

The counfel for the appellants were Mr. Maddox and Mr. Dunning, the former went very fully into the defign, motives, and policy of the marriage act, paffed in the 25th of George the Second, and demonftrated very ably the fingular hardfhips which it impofed, even when conftrued in the moft liberal and extenfive manner, but contended, however rigorous, and in many refpects impolitic it might be, it was never defigned or intended to veft the power exercifed on the prefent occafion in the court below.——It was merely paffed, fo far as it applied in the prefent inftance, to prevent young people from throwing themfelves away, and from making a choice which was to endure for life, when the parties were not at an age fit to form a proper judgement.—But the act fpecially provided, that with the confent of parent and guardians, infants fhould always be at liberty to marry. The teftator could not be ignorant of the law, and though in the prefent cafe a queftion arofe, whether from the previous conduct of the parent, guardians, and truftees, the young lady had not become a ward of the court; it was evidently clear to him, that it was equally agreeable to the equity of that court, the law under which the court below derived its power, and juftice, in the particular cafe before their Lordfhips, that the petition fhould be granted, and the decree or the report made by the court of Chancery remitted back to that court, or inftantly reverfed.

Mr. Dunning with infinite wit and ingenuity endeavoured to ridicule the new mode of courtfhip about to be eftablifhed by the noble Lord on the woolfack, by his late decifion in another place.

He contended, before that decifion could have the fanction of law or juftice, this propofition muft be antecedently eftablifhed. "That to conftitute happinefs in the married ftate, or legalize an union between a rich infant and the man fhe loved, an equality of fortune was indifpenfibly neceffary." Here the young lady publickly avowed her attachment to his client. Her mother, her only furviving parent, approved of her choice, and the guardians under the will chearfully and without referve confented to it.

If the court below proceeded on any folid ground, it could be only this: the preventing the young lady from taking an improper ftep, or if the ftep was proper, interfering left the contingent intereft vefted in the perfon in remainder fhould be affected, contrary to the intent of the devife, as connected with the operation of law.

That young ladies, if left entirely to themſelves, under the ſudden impulſe of love, might act imprudently, he was ready to acknowledge, and when the fact or appearances proclaimed this, the diſcretionary interpoſition of the court below was in his opinion very proper. It was clearly a wholeſome exerciſe of the patronage, care, and protection, which the ancient law in ſome inſtances, and the legiſlature in a particular one, had veſted in the Chancellor for the time being; but in the caſe before their Lordſhips, no fraud or impoſition was pretended. The parties were all fully informed on the ſubject. The noble Lord, ſo far from wiſhing to impoſe on the young lady, her mother, or her guardians, had with all poſſible honour and candour, an honour and candour befitting his birth, rank, and perſonal character, laid his ſituation before them, even to the moſt minute particular; and yet, ſtrange as it might ſound, his openneſs and almoſt unprecedented ingenuity proved the very cauſe of his preſent embarraſſment, nothing being eaſier, if he harboured any intention of miſleading the court, than to make out a caſe for it, which ſhould put an end to all future doubt, embarraſſment, or enquiry.

He urged this argument in a variety of ſhapes, and ſaid the queſtion, which properly came to be argued at that bar, was clearly, by what rule ſhe eſtimated her own happineſs, what ſhe was about to part with, and what to receive in return, and upon the whole, after weighing the intrinſic value of both, making her option; or whether, after the moſt ſcrupulous compariſon, ſhe would not be happier if wedded to the man ſhe loved, than ſhe could be with any other, however opulent, or in a ſingle ſtate? This was a matter, when thus conſidered and fully matured, which could concern her, and her only, and he had no doubt, whatever the noble Lord who preſided in the court below might think on the ſubject, relative to perſons of fortune intermarrying with perſons equally wealthy, his Lordſhip would nevertheleſs agree with him, that the ſtandard of ideal happineſs, which he had meaſured, could not operate an inch beyond the circle of his own breaſt. Indeed he never underſtood, nor hardly ever heard, that ſettlements and equality of fortune ſerved to unite hearts, though he knew in a thouſand inſtances that they united hands.

The only point which remained to be conſidered, or which indeed admitted of any ſerious queſtion, was this, that if permiſſion were given to the parties to marry, that the eventual

tual enterefts of others who would be entitled to claim under the will, fhould the young lady die unmarried, might be thereby affected. To this he would anfwer, that when the lady fhould attain the age of twenty-one years, fhe might difpofe of the fortune as fhe liked, and if on the difmiffal of the prefent appeal fhe fhould marry, and have a child or children begotten during her nonage; in that event they would take and of courfe bar the remainder, fo that in neither event would the intereft of thofe in remainder be affected. If fhe married and had no child, and fhould die before fhe attained the age of twenty-one, the perfon or perfons in remainder would take under the will; if fhe married under age without confent of the court of Chancery, and had children, the remainder would be barred; confequently the confent of the court was no more than a mere matter of form, for it could give or fubtract nothing, nor create any eftate, which was not before in being.

On the whole, as the idea of an equality of fortune feemed to him to eftablifh a falfe principle of matrimonial happinefs, equally repugnant to natural freedom and connubial harmony, he made no doubt but their Lordfhips, who were equally competent to judge with the firft lawyer in the Hall, or that Houfe, would agree to the reverfal of the decree made in the court below, and give directions for a fuller confideration and for granting the prayer of the appellants petition.

The queftion was put, without a fingle word, from within the bar, and affirmed;* though the Earl of Abingdon rofe and attempted to fpeak, but was informed, that the queftion was already difpofed of.

The Houfe adjourned at five o'clock to Wednefday.

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* It was pretty remarkable, that within three days, one brother (Lord George Gordon) fhould be tried for high treafon at the King's Bench bar, and the other (Lord William) be a fuitor at the bar of the Houfe of Lords to take off an interdict laid upon him by the Court of Chancery, not to marry a rich heirefs, who was ready to beftow on his Lordfhip her heart, hand, and fortune. The former was however lucky enough to be acquitted, and the latter equally fortunate, by the young lady's bidding defiance to the trammels of law, and rendering herfelf and him happy a few days afterwards at Gretna Green.

February

February 14.

This day, as foon as the private bufinefs was over, the Lord Chief Baron delivered the opinions of eight of the judges in the cafe of Ambrofe and Hodgfon, it being an appeal from a decifion of the Court of King's Bench.—The opinion of that court was affirmed on the principle that the word heirs in a teftamentary devife, are words of purchafe, not of limitation.

Earl of Abingdon.

The Houfe was about to adjourn, when Earl of *Abingdon* rofe and renewed his complaint concerning the precipitation with which the Houfe had proceeded to affirm the decree on the appeal brought before their Lordfhips by Lord William Gordon, as to his marriage with Mifs Irwin, on Friday laft. His Lordfhip reprobated this unjuft and flovenly rapidity in terms of great afperity, and faid that he intended to have troubled the Houfe with his fentiments upon the fubject, if he had not been prevented by the extraordinary and premature determination to which they had been led.

Lord Chancellor.

The Lord *Chancellor* contended that the mode obferved upon the occafion alluded to by his Lordfhip, was exactly that which was invariably practifed in all fimilar fituations. He was always happy that all the judicial proceedings which came under his cognizance, fhould be carefully and deliberately difcuffed, and he was fincerely forry that any accidental occafion fhould have impeded fuch a difcuffion in the cafe in queftion.

Earl of Abingdon.

Earl of *Abingdon* was not at all convinced that the impediment alluded to by the noble Lord on the woolfack had its origin in accident. His Lordfhip, he faid, laboured under no defect of lungs, if he clofe to exert them, and he declared upon his honour, that he had never heard him go through the ufual formal form in moving the Houfe for their opinion upon the fubject then before them. A noble Duke he faid had come down for the exprefs purpofe of giving his negative to the queftion; and he called upon the noble Duke to declare whether or no he had not been deceived by the precipitate manner in which their Lordfhips' fuppofed opinion had been taken and declared, and whether it was not every way fair to contend that it was an act clearly without the concurrence of the noble Duke and himfelf, and of courfe refpecting them a nullity as members of that Houfe?

Lord Chancellor.

The Lord *Chancellor* (Lord *Thurlow*) informed the noble Lord, that he argued from a total mifconception of the regular mode of proceeding in cafes like that in which he complained of improper precipitation. It was never ufual in cafes of appeal for

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any negative to be put upon a motion for affirming a decree, but if any noble Lord chose to object, the proper and established method was for him to rise up and move the House for reversing the decree in question.—Neither his Lordship, nor any other noble Lord had done that, though due time had been given for such a motion previous to the question having been put in the usual form from the woolsack, and therefore when this was ultimately put, the time was lost for urging a negative, and it would have been unseless and superfluous in him to have stopped a moment between putting the motion for affirming the decree and ordering it, such a suspension never being the practice in similar situations.

Lord Hillsborough.

Lord *Hillsborough* explained to the House, that he sat nearly at as great a distance from the noble Lord on the woolsack as the noble Earl who had before spoke upon this subject, and he declared that he heard the question put with all due form, and the word affirmed, pronounced in terms perfectly distinct, and in a voice perfectly audible.

Ld. Marchmont.

Lord *Marchmont* spoke to the order of their Lordships' proceedings, and confirmed the fact, and gave a minute history of the established custom in cases similar to the present.

After some trifling conversation, Lord Abingdon suspended his complaint, and the House adjourned to the next day.

February 15.

As soon as the private business was over, the Duke of *Bolton* rose, he said, to make a motion, in consequence of the papers he moved for previous to the recess, the purport of which, he presumed, had been sufficiently explained upon a former day. (7th November 1780.) He reminded their Lordships, that he said, when he moved first for the papers, he meant that their production should lead to an enquiry into the loss of the outward-bound East and West India convoy, which was captured by the Spanish Admiral (Don Cordova) last summer. He had good reason to believe that such a disaster could not have happened but through gross neglect somewhere.

He looked upon the loss of that fleet as a very singular misfortune; and of course it was worthy of the attention of Parliament, and of importance to both Parliament and the nation, to discover the cause or causes of that fatal disaster. Neither the object of his motion, nor the mode he had struck out, was unprecedented or unusual. Government was intrusted with the protection of the state, and enabled by the nation to execute the trust reposed in it. When government therefore

therefore failed in a faithful or able discharge of its duty, ministers and every department of the executive government were responsible and amenable to Parliament. Their Lordships' journals exhibited many repeated proofs of the exercise of that controul in the reigns of Charles the First and Second, and King William and Queen Anne. He trusted, therefore, that he should not hear it objected to him, on the ground of want of usage. He still had less right to expect it; as the motion he intended to make was a matter of course, no more than to take up the papers now on the table, and in possession of the House, and referring them to a committee of the whole House. He moved, "That this House will, on Monday se'nnight, enquire into the conduct of the navy, and the cause of the loss of that valuable convoy of store-ships, victuallers, and merchant-ships, in August last."

The Earl of Sandwich.

The Earl of *Sandwich* rose to oppose the motion. He by no means approved of the introducing into the motion an enquiry into the conduct of the navy, in the manner proposed by the noble Duke, while the motion itself imported no more than a mere enquiry into a particular transaction, the loss of the outward-bound East and West-India fleets. He had no objection to the latter part of the motion, but he thought, upon many accounts, it would be extremely improper, if not dangerous, to go into an enquiry on the former. He begged leave to assure their Lordships, that he had no fear on his own account, but in his opinion, it would be not at all prudent to lay before the public, and of course, in process of time, our enemies, the state and condition of our fleet, and every thing which directly or indirectly related to it.—As for the enquiry into the loss of the convoy, no inconvenience could now arise from any communication relative to it; and he assured the noble Duke, that, conscious of the propriety and rectitude of his own conduct, as presiding at the Admiralty-Board, he was every way ready and prepared to have that matter sifted to the bottom. He wished the noble Duke, who must know well the nature of such an enquiry as his motion imported, to consider what a variety of objects it would embrace, and what a number of documents it would call under their Lordships' consideration. No less than the number of ships, guns, men, rates, &c. nay, even their condition, state, and equipment, the very timber in the dock-yards, and every thing coming within the description of naval stores.—Under the reservation of confining the enquiry to the loss of the convoy exclusively, he begged once more to assure the noble Duke he had not the least objection.

Duke

Duke of Bolton.

Duke of *Bolton* replied, that his motion was not meant to bring on a general enquiry into the state of the navy—It was only directed to a particular transaction, specifically pointed out, and depending solely on the papers laid on their Lordships' table before Christmas. When he therefore moved the words, conduct of the navy, he only inserted them in his motion to enable him to go into the subject which was to come under their Lordships' consideration. The purport of his motion was simply this—to enquire into the conduct of the navy, so far as it related to the loss of the convoy. The noble Earl should know that such an introduction was necessary; and to convince his Lordship that his motion imported no more, he was willing either to alter it himself, or to acquiesce in whatever amendment the noble Earl should propose, in order to remove the objection of a general enquiry into the navy. He could hardly have imagined, when he first rose, that the noble Earl would have taken the ground he did.—He presumed, when the noble Earl not only acquiesced in the motion, at the time it was first made, but in a manner made it his own, by moving and carrying an amendment, that he could not afterwards with propriety rise to oppose it, or, which was worse, endeavour obliquely to defeat it. The noble Lord anticipates the conduct of others, by pointing out what he would do himself. The conduct of the navy, says his Lordship, includes every thing belonging to the navy;—certainly every part of it which applies to the loss of the convoy, and no more.——He wished, however, that noble Lords would only attend for an instant; for by the same mode of arguing every circumstance or question relative to the loss of the convoy, if the motion were worded in that way, the noble Lord would defeat by answering, or rather preventing any answer being given, by saying, that the queston, though it related to the loss likewise, went to an enquiry into the conduct of the navy.—Thus, under the semblance of an enquiry, all information, at least, such information as would enable their Lordships to determine, whether there was any blame incurred, and by whom, would be either withheld, smothered, or evaded. How it was possible to proceed, unless the motion went in the form he had drawn it up, he was at a loss to conceive; and why it might not go in that form he could not tell,—it could disclose no secret; it would do no harm; it could convey no improper information to our enemies. The noble Lord indeed confessed as much: but he could perceive the noble Earl was sore; the conduct of the navy, and every

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circumstance belonging to it, created an alarm in the noble Earl's breast.—The noble Lord did not want to be told, that it was not his intention to go at large into the subject of the state of naval affairs;—he meant only to go into so much of it as related to the loss of the convoy; consequently, if the noble Lord was serious in his objection, he had his free leave and consent to modify it in such a manner as to entirely remove all objection, by restraining the motion to the capture of the convoy.

The Earl of Sandwich.

The Earl of *Sandwich* remarked, that when he said he had no objection to the latter part of the noble Duke's motion, he by no means wished to be understood as approving of it, and the reason he had was this—Captain Moutray was liable to be tried for the loss of the convoy; and if the present proposed enquiry was to go on, and any decision should take place, their Lordships might think him guilty or innocent, though a court martial might think otkerwise. He did assure the noble Duke he had no manner of objection on his own account. The Admiralty, he would be bound to maintain, had performed their duty; but he would be sorry that the House should come to any prejudgment on the conduct of an absent officer, who would be brought to trial regularly, in the way of his profession: if their Lordships should, however, determine otherwise, he would chearfully acquiesce. At all events, in the form the present motion was framed, it was impossible he could give it his assent. The motion was to be sure general in words, but was nevertheless specific it its object—no less than an enquiry into the conduct of the navy———and the loss, &c.

Here the first part of the paragraph took in the whole of the navy, and every thing belonging to it, number of ships, men, guns, rates, stations, even to an account of the stores, and the quantity of timber in the yards, &c. On this ground he should set his face against any modification of the motion, unless the first part of it was left out, nor did he think that even the latter part of it was regular. The noble Duke before Christmas moved for some papers [Admiral Geary's and Captain Moutray's letters]; the proper and regular motion, therefore, in his opinion, was neither the conduct of the navy, nor even the loss of the convoy, but to move that their Lordships be summoned upon a certain day for the purpose of taking those papers into consideration.

The Duke Bolton.

The Duke of *Bolton* said he was not surprized that the noble Lord had so suddenly shifted his ground, and fled from

and deserted his first argument; that it would be improper at this juncture to go into an enquiry into the conduct of the navy; for it was now evident that his Lordship was determined to shrink from all enquiry, and particularly into one which might be the means of satisfying their Lordships that the loss of the convoy arose from the criminal neglect or ignorance of the admiralty board. The noble Lord was conscious, that if the able and honest officer who commanded the grand fleet last summer was brought to that bar, he would deliver testimony which would prove the total ignorance of those to whom the direction of naval affairs was committed. He would prove that they gave such orders as no man ought to obey, or could understand. It would appear of a piece with all the rest of their conduct, with their giving orders to the late Sir Charles Hardy, with forty ships of the line under his command, to fly from an enemy very little superior, in the very channel. An enquiry into the conduct of the navy would disclose the reasons which suggested the disgraceful measure of our fleet which was sent out last winter in order to intercept the Frence convoy, to wait for the enemy till they got a sight of them, and instantly fly into port from them, and leave our own returning East India fleet to the mercy of the enemy, or to the mere chance of a fortunate mistake. These were matters that would, and must be enquired into at some future day; and he was not surprized that his Lordship should express so much anxiety to defeat any measure or motion which might lead that way.

The Earl of Sandwich.

The Earl of *Sandwich* was much pleased, he said, to find that he had discovered the drift and tendency of the noble Duke's motion. What fell from the noble Duke in his last speech put it beyond question that his intention was by a side wind to lead their Lordships into an enquiry into the conduct of the navy, under a pretext of enquiring into the causes of the loss of the convoy. His Grace now acknowledged that he meant to bring a very respectable officer [Geary] to their Lordships' bar, and he presumed all the other officers he had mentioned. He would never sit silent and hear any officer's conduct arraigned There was not an abler nor a braver officer in the service than he whom the noble Duke represented as flying into port as soon as he descried the enemy (Darby) he was sent to wait for. That officer never fled from the enemy, nay, never kept out of their way, nor avoided them. Neither had he ever got sight of them, though some of the frigates belonging to his squadron, detached for the purpose of descry-

ing them, had. He kept the sea, and of course he did not dishonour the flag. It is true that perhaps he did not seek them, and he acted right, considering the great disparity of force. When Admiral Darby got a sight of the enemy, his squadron consisted of but seventeen, whereas the French consisted of thirty-eight, if not forty-four ships of the line. Was his not endeavouring to compel the enemy to come to an engagement wich such an inferior force, any disgrace or neglect of duty? He trusted it could not be deemed so; but on the contrary, reflected the highest honour on the officer who had at once the prudence and resolution neither to rashly precipitate an engagement under such manifest disadvantages, and resolution and gallantry to put himself in the way of an enemy so vastly superior, and not decline the combat.

Lord Stormont.

Lord *Stormont* said, he did not mean to rise upon the present occasion, because he looked upon the motion which the noble Duke intended to make as no other than a motion of course, to take the papers moved for before the recess off the table. Such being the case, he owned he was astonished to hear the noble Duke enlarge his motion, or rather to make one essentially different from that, which their Lordships presumed, they were summoned to discuss; and he believed, except the noble Duke himself, and such noble Lords as his Grace might have thought proper to communicate his intentions to, there was not a noble Lord present who was, or could be apprized, that a motion merely for a particular paper, or letter, meant to include an enquiry into the conduct of the navy, and the vast mass of information such an enquiry would draw after it.—The proper motion therefore, in his apprehension, would be, to order that said papers or letters be taken into consideration on such a day—whatever day the noble Duke shall or may think proper to propose.

The Lord Chancellor.

The Lord *Chancellor* was of opinion that neither of the noble Peers who had spoken was in the right on this occasion. The objection that had been urged by the noble Lord at the head of the Admiralty against the motion, which was in the possession of their Lordships, was certainly not a good one, for it could not be for a moment supposed that the noble Duke could derive any power of entering into a general enquiry into the state of the navy from the terms of his motion, because he had not only already explained his particular object in the institution of this enquiry, but had expressed what was the sole motive and object of making the motion at the time. Under these circumstances, the noble Duke must have

have been conscious that he could have no power of commencing an indiscriminate investigation in consequence of a motion so limited in its form. But though this was in his idea no valid objection to the enquiry in qustion, there was another very substantial one, and that was, that such an enquiry was intirely premature as to the time of its being instituted: it would at present be a very unjust and unpardonable anticipation of another and more solemn enquiry, a legal enquiry into the conduct of the captain who had the command at the time that this fleet was captured.—He understood that Captain Moutray was to be tried for his behaviour on this occasion, and it would be totally inconsistent with the justice of that House to proceed to a decision upon a subject which might, in its consequences, affect the ultimate judgment that was to be entertained by a regular court martial concerning that officer. If, after that House had gone thro' their enquiry, and had come to a resolution in consequence, that the guilt in this transaction belonged to a quarter which Capt. Moutray was not at all concerned in, then they would be suspending the natural operation of a judicial enquiry, by their anticipation; for it would seem absurd to try Capt. Moutray, after the first court of judicature in the kingdom had, by a serious and solemn decision, pronounced him totally innocent. If, on the contrary, they should at the termination of the inquiry wished for by the noble Duke, declare that the principal guilt was chargeable to the officer, he would be subjected to the misfortune of going to a trial in which his fortune, character, and life, were concerned, with all the weight of such a high authority against him, and with every prejudice and bias that such a decision would naturally carry with it. On this account, therefore, he held it quite improper to prosecute the enquiry moved for by the noble Duke; but he wished it to be understood as his opinion in general, that the noble Lords were extremely mistaken if they supposed they possessed a right of bringing every little occurrence under a parliamentary examination.—If this were the case, if every trifling loss which occurred in the unavoidable chance of war, were to be brought before that high tribunal, there was an end to executive government, it could proceed no farther; the political machine must stop, and the business of the kingdom must stand still.—But that was by no means the case; for in his opinion no doctrine could be at once more impolitic, and more unconstitutional than the establishment of such a power in either of the deliberative branches of the legislature.

ture. All that could be done at any rate in the present instance, was to move for a day for the papers which had already been laid before their Lordships to be read, as it was impossible they could in the natural course of things proceed to build an enquiry upon any papers which had never been previously read to them. He for his own part had not perused the papers which had been laid before the House in consequence of the noble Duke's motion, and was not therefore competent to speke or determine concerning any subsequent motion which might be founded upon them.—Other Lords might possibly be in the same predicament, and it would of course be altogether improper for them to accede to any thing else in the present stage of the business, but to the appointment of some future day for having the contents of the papers in question properly and carefully read to them.

Ld. Dudley

Lord *Dudley* said, he objected to the motion when it was first made, because he foresaw it would lead to the very discussion the noble Duke now apparently wished to bring forward, that of an enquiry into the conduct of the navy, and of course into that of the admiralty board——He saw the motion in another point of view, that of leading to a judgment or opinion opon the professional conduct of an absent officer; in either event, whether as leading the House into a tedious, and in every sense, a very improper discussion, in the present critical state of public affairs, or coming to a decision upon the conduct of Captain Moutray, he thought the motion, made by the noble Duke, every way improper, ill-timed as to the season, and unparliamentary as to the proceeding, because possibly productive of injustice and prejudgment.

Duke of Bolton.

The *Duke* of *Bolton* observed, that the argument urged by the learned and noble Lord went rather too far for the use he obviously intended it. The learned Lord contended that their Lordships ought not to interfere in the conduct of the executive government upon *every* occasion.—He was ready to acquiesce in the general position.—It would indeed be productive of nothing but inconvenience and confusion, if that House was to interfere, or attempt to controul government upon every occasion; —but when he acknowledged this, he was ready to maintain, that circumstances sometimes arose, in which it was the duty of that House to controul the exercise of the executive government; and when it would be highly criminal in their Lordships to neglect it.—There was indeed another reason, which the noble and learned Lord forgot

got to mention, and which would render the matter totally impracticable, or the task endless; for if their Lordships were to take up and enquire into every absurd and foolish measure adopted by ministers, Parliament would have nothing else to do from day to day, but to enquire and to censure or punish the public delinquents.—The whole attention of their Lordships would have constant food for animadversion, and that of the most severe and unpleasant nature, were it to be taken up with remarks, upon even the tenth part of the omissions, blunders, and the gross wilful neglects with which ministers were justly chargeable.—Therefore, though the noble and learned Lord's position might be extremely true, that it was not fit that Parliament should interfere upon every neglect or omission of duty, this position was equally founded, that there might many circumstances arise in the exercise of executive government, which if Parliament neglected to take notice of, they would be highly censurable.

He maintained that the admiralty board were highly culpable; that they neither knew how to draw up instructions, so as to render them intelligible, or, when they did, that they were such as were or ought to be obeyed. The noble Earl knew this to be the case when the Channel squadron was last at sea—councils of war had been frequently held to decypher the instructions under which the admiral acted; but in vain; no man could make them out. Far be it from him, as had been insinuated by the noble Earl, to lay any blame to admiral Darby; he never thought of it. He only stated a fact, which every man was at liberty to argue upon who heard it; and the noble Earl's own confession clearly exculpated the admiral; it would have been rashness in the extreme; it would have been madness in the admiral to have acted in any other manner than as he did. But he foresaw that the enquiry was to be defeated at all events; Capt. Moutray's trial was the pretext. He believed that officer would never be tried; and thus the justice of the nation would be evaded, as the captain would be loaded with the implied blame, and stand as a screen between the nation and the admiralty board.

The Earl of Sandwich.

The Earl of *Sandwich* in reply said, it was the intention of the admiralty board to bring the captain as speedily as possible to a court martial? orders had been sent some time since to his commander in chief, Sir Peter Parker, to bring him to a trial; and probably before now his trial was over, and he would be honourably acquitted. He knew there was no blame due to Captain Moutray; he was equally satisfied in respect of the admiralty board; and when he opposed the noble Duke's

Duke's motion, he assured his Grace he had done so from no other motive but merely to prevent the possible clashing of opinion between that House and the court martial who may have tried him.

The Marquis of Rockingham. The Marquis of *Rockingham* was very severe on the noble Lord who spoke last; reminding him of his former promises of pledging himself repeatedly to that House of having a fleet equal, if not superior, to the united force of France and Spain, and yet acknowledging in the face of the nation that the enemy out-numbered us in the proportion of more than two to one; stating that Admiral Darby had under his command but seventeen, while the French fleet consisted of thirty eight, if not forty-four of the line.

Earl of Sandwich. The Earl of *Sandwich* said, that this arose from accident; that the fleet, when riding at Torbay, consisted of twenty-seven, four of whom, a first rate and three other large ships, were disabled in a violent gale of wind; that another, the Alexander, commanded by Lord Longford, lost her mast, and that five more had separated and returned into port; consequently, though Admiral Darby had no more than seventeen under his command, he would, but for those unfortunate circumstances, have had twenty-seven.

The Marquis of Rockingham. The Marquis of *Rockingham* made a short reply. He said this was a confessed inferiority of fifteen sail of the line; an inferiority so great as not to be supplied by any exertions of skill or courage: he recommended to the noble Duke to withdraw his motion, as it was in vain to expect to derive any advantage from that or any other motion. That side of the House had continued to predict consequences till all further efforts were ineffectual. They would not be agreed to; and if they were, he expected very little if any good from them. He feared the nation was ruined beyond redemption; and such being his opinion, he should give himself no farther trouble.

Duke of Bolton. The Duke of *Bolton* retorted upon the Earl of Sandwich, ridiculed the idea of numbering ships who had never gone to sea, and said, the noble Lord might as well count those on the stocks, as these that were obliged to go into dock to repair the damages they received in Torbay. This species of the possible, the probable, he might indeed call it the improbable, recalled to his mind the old story; if such a thing happened — such another might have happened; and then such a consequence would or might have followed—The simile pursued further would sound rather coarse; but certainly the string of suppositions, which had been stated

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by the noble Earl, was equally ludicrous, extravagant, and improbable. It was the duty of the first Lord of the Admiralty to provide against accidents of this nature, and if he had not men and ſhips, at leaſt to have ſhips ready to receive men upon ſuch an occaſion. The want of the Alexander ſhould likewiſe be ſupplied in the ſame manner. In ſhort, the whole of the noble Lord's argument came to this, that twenty-two ſail went out under Admiral Darby (he believed but twenty-one) and that four or five of theſe returned into port for want of proper inſtructions; but ſuppoſing they had all kept company, there were twenty-two Britiſh ſent out to encounter forty-four French and Spaniſh—thirty-eight French and ſix Spaniſh, his Lordſhip having acknowledged that ſix Spaniſh came to convoy the French to a certain latitude. From this public confeſſion, he left it to their Lordſhips to judge how far the noble Earl, at the head of the Admiralty, had kept his faith with Parliament, after ſo repeatedly aſſuring it, that he would have at all times a fleet, if not ſuperior, at leaſt equal to cope with the united force of the Houſe of Bourbon.

But it was not even the inferiority of the force for which miniſters or the noble Earl were ſo much to blame. It was the injudicious employment of the force we had. During the Summer we had nothing, or next to nothing, to apprehend from France: the Breſt ſquadron was not in force or condition to venture to ſea in a body. They found themſelves obliged to detach in ſingle ſhips, in order to collect a force at Cadiz ſufficient to ſecure and protect their trade fleets, in their return home, and to draw the attention of the Britiſh ſquadron to the ſouthward. If therefore Admiral Geary had been ordered to cruze off, and to the ſouthward of Cape St. Vincent's, and ſo paſs the land latitudes, inſtead of Capes Ortugal and Finiſterre, one of theſe two things would have happened, either Don Cordova would not have ventured out of Cadiz, or, if he had, he would be obliged to fight for that convoy which he captured without firing a ſingle ſhot!—Cordova had but thirty ſhips under his command. Mr. Geary had twenty-eight, at leaſt with the Ramilies; and from the condition of the fleet, conſiſting of three three-deckers, and nine ſeconds, beſides the reſt all ſeventy-fours, one ſixty-four excepted, it was reaſonable to hope with ſuch a force, that if a deciſive victory would not have been the conſequence, there was every fair expectation of our being able to give an extreme good account

of the enemy, and at all events, of protecting that convoy, the loss of which he feared would prove so fatal to this country. He assured the noble Earl, that although he wished to call Mr. Geary to that bar, he, by no means intended to go at large into the conduct of the navy, yet he was free to acknowledge that in seeking the cause of the disaster alluded to, it would be necessary to ask that able and upright officer some questions; such he believed, if permitted to be put and answered, as would fully convince their Lordships that the instructions under which that officer acted were founded in ignorance, absurdity, and contradiction, and were the sole occasion of that mischief which afterwards happened, he meant the total loss of that valuable convoy, the most valuable in some respects this country ever lost; and that independent of the mere loss of property, on two special accounts; first, because it deprived our squadrons on the Jamaica, and Leward Island stations of those stores in which they stood so eminently in need of; and secondly, because it was the means of furnishing an enemy with those very stores, a supply they could not procure but with great difficulty or risque in any other manner, at least not for the purpose of immediate out-fit and equipment.

Nor was the conduct of the latter part of the campaign less pregnant with proofs of ignorance and incapacity. The noble Earl, with a degree of great affected industry, had endeavoured to wipe away the censures supposed to be hinted or insinuated against the characters of the two officers who occupied successively the chief command of the western squadron.—His Lordship might have spared himself the trouble, and have taken some other more fit and convenient opportunity to make the eulogium of those two gentlemen, and would besides have acted with more candour, had he confined himself merely to panegyric, without insinuating that the panegyric contained a reply to some obloquy attempted to be thrown on the admirals Geary and Darby.—With the former he had been long acquainted, and entertained a very high esteem for him, as a man, and respect, as an officer. He knew his abilities, his courage, and intrepidity; and retained no doubt but he had faithfully and ably discharged his duty. Of Mr. Darby he knew but little, of his own personal knowledge; but from what he could learn, he believed him to be an able and active officer. As to the observations which fell from his Lordship in the course of the debate,

debate, they evidently bore no relation to the professional conduct of either Mr. Geary or Mr. Darby; they were directed against the Admiralty Board, which issued the orders, or drew up the instructions, under which those officers respectively acted. When, therefore, he talked of Mr. Darby's going out at an improper season, or having been obliged to return into port, he never intended to cast the least reflection upon him. It was the Admiralty Board who had sent him out with a force so totally inferior to that of the enemy, which inferiority was the cause of that gentleman's being obliged to avoid the enemy, and having been in the end under the necessity of abandoning the protection of that very fleet he was sent out to see safe into port, he meant the East-Indiamen, which were then daily expected to arrive in some port in Great Britain or Ireland.

To point out those omissions and neglects, from the very mouths of the persons concerned, was the motive he had for troubling their Lordships on the present occasion. That could not be expected in any other manner, but by enlarging the motion, unless the noble Lord at the head of the Admiralty would pledge himself to that House, that all the circumstances respecting the capture of the convoy were permitted to be fairly gone into, and discussed. That the noble Earl did not seem willing to agree to; and he was not surprised. It was an additional proof of his foresight and precaution; he dreaded the consequences of a fair and impartial investigation; he was conscious that it would exhibit nothing but a succession of blunders, mistakes, and contradictions. One day, do this; the next, do that; the third, an order for countermanding the preceding; by which means, the officers who acted, or rather attempted to act, under such instructions, had no specific object held out to them, and were at the same time deprived of every aid drawn from their own knowledge and experience, having no liberty to conduct themselves agreeably to their own judgment or discretion, and according to time, circumstance, and opportunity. Thus it was, that when the fleet was last out, the rendezvous being changed, after the five ships parted company, they were not able afterwards to rejoin, but were necessarily obliged to return into port. So it happened in a later instance. Councils of war were held to interpret the Admiralty instructions, but in vain; in fine, such a mixture of folly and confidence was never exhibited in a naval administration in this country since the foundation of the monarchy, as had been within a very few months. He saw, however, that, if he persisted in his motion, it would answer

no purpoſe; for which reaſon, he ſhould follow the advice of his noble friend, [Rockingham] and withdraw it; though he did not in the leaſt deſpair, but the time would ſhortly arrive when not a partial, but a full inquiry would he made by their Lordſhips into the conduct of the navy.

February 16.

Appeal from Ireland: Cranbraſil againſt Taylor. Queſtion. Whether his Lordſhip, as Chief Remembrancer of the Exchequer in Ireland, was entitled to privilege, as an officer of the court? Determined in the negative, and the decree of the Lord Chancellor of Ireland affirmed.

Adjourned to Monday.

February 19.

NEW DOCTRINE of DIVORCES.

The order of the day, for the ſecond reading of Gooche's divorce bill.

The abſtract of the evidence, on which the divorce was prayed, was as follows: A diſagreement having taken place at Bath, in the year 1778, relative to an improper familiarity between one Rauzzini, an Italian *caſtrato*-ſinger, Mr. and Mrs. Gooche agreed to live ſeparate; in conſequence of which the latter went to reſide in France upon a ſeparate maintenance.

There the lady had not long reſided before it was generally underſtood, or wiſhed for, between the parties, to take the neceſſary meaſures for ſeparating for life.

The firſt fruit of thoſe meaſures, as it came out in evidence, was, that her ſervant, a French woman, came over the next year, and a regular divorce or ſeparation, *à menſa et thoro*, being ſued in Doctor's-commons, her woman gave ſuch teſtimony of the criminal familiarity of her miſtreſs with ſeveral French officers in divers places, that the parties were divorced.

It however came out, in croſs examination at the bar, that this evidence, or more properly ſpeaking, the teſtimony of a ſingle witneſs, was not deemed ſufficient for a divorce, to be ſanctioned by the legiſlature, to enable the parties to marry again; on which, the ſervant woman returned to France, and in a ſhort time afterwards it was ſo managed that a cook in the houſe at Calais, where Mrs. Gooche lodged, was called up one night, at eleven o'clock, apparently with a view to be preſent when Mrs. Gooche was in bed with a French officer.

The facts of criminal commerce, here mentioned, were the grounds of the preſent application; and the order of the day was read for the ſecond reading of the bill.

At

The Lord Chancellor.

As soon as the written and parole evidence was finished, the Lord *Chancellor* (Lord Thurlow) came from the woolsack, and spoke to the following effect: His Lordship observed, that when persons came for redress to that House, in matters respecting property, and when the event of the application affected themselves solely and exclusively, it had been the established usage to qualify their claims, or concede or interchange their rights and possessions, as choice or convenience might suggest, no persons having a right to complain where no injury could happen; but if an individual, no matter of what description or condition, from the prince to the meanest subject, sought favour or redress, the case was very different when the property or personal rights of other persons came to be affected. Here their Lordships were called upon to perform an act of duty, which no external consideration or motive could justify in neglecting or dispensing with: here they were called upon to interpose their authority, and to exercise that power with which they were invested by the constitution, as the guardians of the rights and properties of those committed to their care and protection; and to take care that no private concert or agreement between parties should affect those who were not properly, or in person, before the House, so as in the end to be productive of private injury or public mischief.

It was upon this principle, he conceived, when applications, such as the present, were made, that their Lordships had been at all times specially careful to see that they did not originate in collusion, nor spring from motives, which, if gratified, might be productive of evil example, and operate as an encouragement to a general corruption of morals among persons of a certain rank, condition, or ability.

Cases sometimes happened, he was ready to acknowledge, in which the parties applying had come as petitioners to their Lordships, by mutual consent; and yet, such agreement not amount to what he meant to describe by that species of collusion which he wished to discourage, he meant, where the criminality preceded any knowledge of the guilt, and where the discovery of the commission of the criminal act was accidental. Yet, when the discovery was incomplete, in the first instance, and means had been devised by the consent of the parties, to furnish more relative and fuller proof, he must confess he retained his doubts even of that species of collusion; for it would be extremely difficult for their Lordships, sitting as legislators in that House, to be satisfactorily informed at what time the collusion commenced, or whether the same

means

means of collusion, which laterally furnished the complete evidence, might not have been still pushed a little farther, and have suggested that which appeared incomplete.

The present case, when fully sifted, he feared would be found to be pushed still one step farther than the last he had mentioned; for, by the evidence delivered at the bar, no criminal act was so much as suggested previous to Mrs. Gooche's retiring to France, and living in a state of separation from her husband. It is true, the disagreement arose at Bath, in 1778; but no charge of criminality is mentioned till some months after she arrived at Calais or Boulogne. This implicated doubts of a very suspicious nature, because in his apprehension it amounted fairly to this; that when disagreements arise in the married state, no matter from what cause, or squabbles however trifling in their nature, all the parties had to do would be to separate, and the wife to gratify herself, or perhaps pretend to gratify herself, in order to furnish proofs sufficient to enable both parties to marry again.

Were their Lordships to give way, under the circumstances he had described, it would defeat the avowed purposes for which the relief was sought, and the only purposes to effect which it ought to be granted. It would open a door to every species of this sort of criminal gratification. It would cut asunder the most endearing ties of relationship, it would operate as an encouragement to immoralities of the most disgraceful nature, and poison the fountains of domestic felicity. It would hold out temptations to those who had nothing to regret in the married state, but that they were not single, to get rid of those restraints arising from their situation, by acts which would, in fact, render them unfit for any honourable connection, unless upon a false principle of honour in their supposed or pretended seducers.

To apply the general argument, with which he had presumed to trouble their Lordships, it would not be impertinent or foreign to the subject to corroborate what he now offered, as applied to the case before the House, to what had come out in evidence at the bar.

" Frances Portia, the cook, who had been called in as an auxiliary evidence to make out a case fit for your Lordships consideration, tells you, she was called up at eleven o'clock at night, by Mrs. Gooche, at Rigourd's, at Calais; for what purpose? to be a witness of seeing Dusmeneil and Mrs. Gooche in bed together; and, upon farther inquiry, what more did she tell your Lordships? that in a subsequent discourse, I believe the next morning, Mrs. Gooche told the witness,

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that the motive which induced her to call her up was, to give evidence of the fact in England."

"If your Lordships will attend to the testimony of Berthould, the companion and servant, she tells you, that she lived at Chelsea, with Mrs. Gooche, where she hired herself, and afterwards accompanied her mistress to Calais, Boulogne, St. Omer's, and back again to Calais; and that in each place she was a witness to several criminal acts with the several French officers, whose name she has mentioned. She has not stopped there, she has accompanied the relation of the fact with the avowed motives of her mistress for committing it; for she says, her mistress informed her at the time of her intentions; nay more, before they departed from England, explained to her, what she intended by her proposed residence in France; adding, when in France, as in the case of Portia, that she [Berthould] would be called upon as a witness in England.

"Berthould accordingly returned to England, and gave evidence in Doctor's commons, by the directions of her mistress, and to whom did she apply? to Mr. Woodcock, Mr. Gooche's agent, who supported her, furnished her with money, and paid her her wages, &c. Berthould, in her return to France, informs her mistress of what had happened. She is accompanied by Panchaud, Mr. Gooche's servant, who, instructed by Mr. Woodcock, brought over Frances Portia, the cook, to complete the evidence, which Mr. Woodcock deemed incomplete to support a bill for leave to marry again, though fully competent to ground a divorce, *à mensa et thoro*, in Doctor's-commons upon. It is true, Mr. Woodcock, on whose veracity your Lordships, upon my own knowledge, may with safety depend, says, Mr. Gooche was not privy to any part of the transaction, till after Berthould returned; but I would submit it to your Lordships, whether or not, as there was no evidence of Mrs. Gooche's criminal conduct, previous to her departure for France, and as her conduct in France seemed to be predetermined, or preconcerted, before her departure from England, by the intimation given by her to Berthould before she left it, the present case, under these described circumstances, does not amount to a direct or implied preconcert to get rid of each other at all events, however disgraceful it might turn out to themselves, their immediate family, friends, and connections?"

His

His Lordship said, he was satisfied that Mr. Gooche had been extremely unfortunate, the criminality of his wife having been proved beyond the possibility of doubt; but still it was equally evident, upon the face of the evidence, that the acts of infidelity were all proved to have been subsequent to the intention of one, if not both parties, to dissolve the bands of matrimony, in order to marry again.

In that point of view the case struck him, and as such, agreeably to his judgment, it came within the general exception which their Lordships had marked out when no other reason was urged but the bare proof of criminality. Were the present bill to pass upon the idea of redress, where the injury proceeded from a preconcert between the parties themselves, and had been committed by previous consent, it would, as he had already observed, open a door to every species of immorality, to private criminal gratification, to public prostitution.

He had since he enjoyed the honour of a seat in that House steadily set his face against every attempt of the kind, and ever would. The present case, he confessed, in some respects, was a hard one, but it was not so severe as it might appear, because it was not merely accidental, but fictitious. The question, however, could not be considered any farther than it appeared from the evidence delivered at the bar. In that point of view, he had already fully considered it, and in that only could it now be properly decided upon.

For his part, he never would consent to the second reading of the bill, under the impressions he received from the evidence now delivered; and if a motion should be made to that effect, he would find himself under an indispensable necessity of saying, "Not content." Yet, as there appeared to him to be peculiar hardships in the present case; and as they seemed to be so considered by several of their Lordships, who had heard the evidence, he was ready to consent, for one, that the farther consideration of the business should be deferred to some future day, as time and opportunity might suggest; suppose till Monday next.

The House adjourned, at six o'clock, till Wednesday.

February 21.

This day the Lord Chancellor and the House heard divine service in Westminster-abbey, it being the day appointed, as a general fast, to implore success to his Majesty's arms; where a sermon was preached by the bishop of Bangor.—Adjourned to Monday.

Febru,

February 26.

The poftponed order of the day for the fecond reading of Gooche's divorce-bill being read, the *Bifhop* of *St. David's* (Dr. Warren) faid, he begged leave to make a few general obfervations, as well on the bill itfelf as in reference to what fell from the noble lord on the woolfack the laft day the bill was taken into confideration. He informed their Lordfhips, that he had paid particular attention to the evidence delivered on the fubject then before the Houfe, and although he entertained the higheft refpect for every word that the noble and learned lord on the woolfack delivered on any fubject in debate, yet in this matter it appeared to him, that there were very fubftantial grounds for differing in opinion with the fentiments which the learned lord expreffed on Monday laft. He obferved there was no general rule without an exception; and, confequently, that the prefent cafe might come within that exception. Divorces were, it is true, of a very tender nature, and ought not to be granted on flight occafions, or whereby a collufion of the parties, the great moral obligation they had entered into might be fruftrated without legal caufe. He reminded the Houfe, that the evidence delivered at the bar on Monday laft amounted to a full proof of Mrs. Gooche's criminality antecedent to any conftructive collufion that had been adduced between the parties. The wife's fcandalous and profligate conduct had been fully proved to the Houfe, but on the part of the hufband not a particular was hinted, which could lead to a fingle circumftance that there had been in his conduct the fmalleft deviation from conjugal fidelity. This was a point which he obferved was well worthy of their Lordfhips confideration. He faid it would be a hard cafe indeed, where fo much guilt appeared on one fide, and fo much virtue on the other, that becaufe the wife wifhed to be feparated the hufband fhould be bound to continue in matrimonial bonds, merely to add actual punifhment to implied difgrace. He befeeched their Lordfhips to take the petitioner's cafe into a favourable confideration, which they muft certainly do if they paid proper attention to the circumftances on which the divorce was prayed. It was a petition founded on the ftrongeft evidence of Mrs. Gooche's having defiled the marriage bed not in one, but in multifareous inftances. He had known Mr. Gooche from his infancy, and he could aver upon his own knowledge that his private and public character were unexceptionable. His cafe was an unhappy one, and from the mifery of his prefent fitu-

Bifhop of St. David's.

ſituation, he could only be relieved by their Lordſhips. He was ready to acknowledge, that the Houſe and the public at large lay under very ſingular obligations to the noble lord on the woolſack for his very laudable endeavours to eſtabliſh a certain eſtabliſhed ſpecies of relief, in all caſes, where the parties were fairly entitled to come to Parliament; and he truſted that none of their Lordſhips, however preſumptuous it might appear in him to ſay ſo, more earneſtly or anxiouſly wiſhed than himſelf to ſee a regulation, ſuch as had been hinted by the noble and learned lord the laſt day, take place.

If this ſound, ſafe doctrine was reſorted to, as the unerring ſtandard of their Lordſhips proceedings, in the preſent inſtance he thought himſelf juſtified in applying the rule to the caſe before their Lordſhips. There could not remain, in the breaſt of any one of their Lordſhips a ſingle doubt, he preſumed, but that the infamy of Mrs. Gooche had been eſtabliſhed by the moſt irrefragable evidence. It was no leſs manifeſt, that the avowed promulgation of the act proved, that beſides the mere vicious gratification, ſhe looked farther; for ſhe was not ſatisfied to be criminal, but ſhe ſeemed deſirous to proclaim and make it known, and for what reaſon? Clearly to lay a foundation for diſſolving the bands of matrimony. He was, ſo far as the argument applied to the guilty perſon (for otherwiſe it would be equally monſtrous, abſurd, and unjuſt to puniſh one perſon for the guilt of another) ready to accede to the doctrine laid down by the noble and learned lord, that the committing a criminal act, with an intention of diſſolving the bands of matrimony, ſhould always preclude the perſon ſo offending from any advantage they might promiſe themſelves to derive from it.

Apply this doctrine in its general ſenſe, or confine it to the particular ſubject under their Lordſhips conſideration, and it would preclude Mrs. Gooche from availing herſelf of her own wrong, though the perſon injured could not, or ought not, to ſuffer by her miſconduct. The motive which induced her to act as ſhe did, would be defeated, and ſtrict and exemplary juſtice would be dealt out to both parties, while the noble and learned lord's ideas would be perfectly fulfilled, namely, doing juſtice to the innocent, and puniſhing the guilty, by witholding from her the object which ſhe meant to obtain.

By what was proved at the bar it appeared, that the lady had acted ſpontaneouſly, as inclination prompted, and as her wiſhes and expectations led. Of this it likewiſe appeared that her huſband was totally ignorant till the injury had been frequently repeated; conſequently, in this infant ſtage of

the business there could be no pre-concert or collusion between them. Nor was there the least suggestion, that he recollected, of any communication between Mrs. Gooche and Mr. Gooche's agent, Mr. Woodcock, till after the return of Berthould the first time from France, when she was called upon to prove the adulterous acts committed by her mistress in France, when examined at Doctors-commons.

The collusion being therefore out of the question, as applying to the first acts of criminality committed in France, as proved by Berthould, the present bill might receive their Lordships sanction; and still the principle laid down by the noble Lord on the woolsack be strictly and rigidly adhered to, that of discouraging and preventing, by every possible means, the guilty party of profiting of their own guilt, or of involving the innocent in the punishment only due to themselves.

On the principle so ably stated by the learned lord on Monday he should move, that the bill, after being read a second time, be committed, for the purpose of new framing it agreeably to that principle, and the special circumstances which took it out of that general rule; in order on one hand to do justice to her much injured husband, and on the other, to deprive her of those advantages which she hoped to derive from her misconduct.

There was one great evil, which arose from collusive or preconcerted agreements of the nature alluded to, that the wife was generally rewarded for her infidelity, and by the expectation of various kinds which were held out, was thereby tempted to do what perhaps she would never otherwise have thought of, had not she a moral certainty of getting rid of the man whom she had ill-treated, and under these impressions bettering her situation, by an ample separate provision.

He spoke, he said, with great diffidence upon a subject in some respects so foreign to his habits, studies, and pursuits; he meant, so far as matters of this kind were connected with questions of property or civil judicature; but he hoped he could not err in point of intention, when his sole and primary object was impartial and indifferent justice. On these motives, and on this principle, and in this persuasion, while he totally disapproved, and in that so far agreed with the noble lord on the woolsack of holding out encouragement to married persons, much less to one of the parties exclusively, to commit adulterous acts, he thought it would be adding actual injury to real misfortune, that the unfaithful wife

 should

ſhould profit by her infidelity, ſo far as to put herſelf by her crimes in a better ſituation, or at leaſt a more deſirable one to her, at the expence of the party injured; an unfortunate, and perhaps doubly ſo, becauſe an affectionate Huſband.

The Lord Chancellor.

The *Lord Chancellor* roſe in reply. He aſſured their Lordſhips, that when, on a former occaſion, he made uſe of the word colluſion, he did not mean to uſe it with technical ſtrictneſs; the term was ſufficiently expreſſive of the idea annexed to it, to render all verbal criticiſm unneceſſary. And ſtill whatever light the tranſaction may have appeared to the learned prelate, he was yet to diſcover what other name to give the latter part of it, but colluſion ariſing from a preconcert in the parties to do or ſuffer a criminal act, in order to lay a foundation for that ſpecies of proof, which from its poſitive and corroborative nature, would be ſufficient to induce their Lordſhips to paſs the preſent bill.

It was true, that Mr. Woodcock, Mr. Gooche's agent, declared at the bar, the laſt day, that when Berthould was in England for the purpoſe of proving the adulterous acts committed by Mrs. Gooche at Calais, Boulogne, and St. Omer's, Mrs. Gooche was totally ignorant that it might be deemed neceſſary to have a ſecond witneſs, to prove the criminality at that bar, in order to entitle the parties to marry again. He was prepared to give every degree of credit to what fell from a perſon of Mr. Woodcock's known veracity and character; yet, he could not help obſerving, that the mode of conducting this buſineſs, ſubſequent to Berthould's return to France, after having been examined at the Commons, created ſuſpicions in his mind, and he believed would create ſuſpicions in the mind of every one of their Lordſhips, extremely unfavourable to the application made by the parties now praying relief.

Here his Lordſhip ſtated the whole of the evidence pretty much in detail, and made ſeveral pointed obſervations on Mr. Gooche's conduct, from the firſt diſagreement, in 1778, to the preſent time, by which it appeared, he ſaid, that he ſuffered his wife to go whither ſhe liked; in conſequence of which ſhe went to France, where ſhe remained eighteen months.—On her return to England, ſhe lodged at Mrs. Macdonald's, at Chelſea, where ſhe met with Berthould, and hired her as a companion or ſervant. Mrs. Gooche thus accompanied, goes to France a ſecond time, and what happens in conſequence? Berthould, who ſeems to have been hired for the purpoſe, is made privy to her adulterous acts, with ſeveral French officers at Calais, Bolougne, and St. Omer's; and

and there was one ſtriking circumſtance which he wiſhed to preſs on their Lordſhip's recollection; that, during the firſt eighteen months Mrs. Gooche lived ſeparate, there had not been the leaſt charge or ſuppoſition of her infidelity. That however was not the caſe; on Berthould's return, Mrs. Gooche, as it ſhould ſeem to him, being informed that the proof was incomplete, calls up Frances Portie to be a witneſs to her infamy at Rigourds; which Frances Portie, in the courſe of her evidence, acknowledges that Mrs. Gooche aſked her, was not ſhe ſurpriſed upon being called up to her bedſide the preceding evening, at ſo late an hour, and on ſuch an occaſion? adding at the ſame time, " you will probably be called to give evidence of this in England." Finally, he would ſubmit it to their Lordſhips, whether the ſending Panchaud, Mr. Gooche's ſervant, to bring over and accompany Berthould and Frances Portie, to give evidence at their Lordſhips' bar, did not afford ſtrong ground of ſuſpicion, though perhaps it did not amount to actual proof, that the whole of the buſineſs, from the Autumn of 1779, when Mrs. Gooche left Chelſea, accompanied by Berthould, was preconcerted between her on one ſide, and at leaſt by the agents and friends of her huſband on the other?

He felt as much as any man poſſibly could for Mr. Gooche's unhappy ſituation. He had an high reſpect and eſteem for his family, with ſome of whom he had lived upon a footing of the moſt friendly intimacy, particularly with his uncle, when at college; from which circumſtance, he truſted, Mr. Gooche and his friends would attribute his preſent conduct as merely ariſing from a ſenſe of duty; for he could with ſincerity aver, were he to indulge his perſonal feelings, and give way to the natural bias which hung upon his mind, he would, inſtead of oppoſing the relief ſought, be one of the moſt forward in granting it.

In farther confirmation of what ſtruck him on the *prima facie* evidence of the nature and quantity of the proof itſelf, and notwithſtanding the great reliance he had upon the aſſurances given by Mr. Woodcock, there were other ſtories afloat without doors. He had himſelf heard different accounts, in diſcourſe, and had received ſeveral anonymous letters, ſtrongly contradicting the caſe attempted to be made out at the bar, all which went to confirm the ſuſpicions he had already ſuggeſted. He had indeed received one from the lady herſelf, in which ſhe informed him, " if all circumſtances were diſcloſed, it would exhibit ſomething very different from what had been given in evidence at the bar."

Such

Such being the general ideas he entertained on the ſubject, he muſt fairly acknowledge, that he could not agree with the learned prelate's motion, for ſending the bill to a committee; and when, as an act of duty, he ſhould be called upon to put the queſtion, he wiſhed to make known his intention of giving that queſtion a negative, at the ſame time anxious that their Lordſhips ſhould be fully perſuaded, that he had no wiſh one way or other, farther than his conduct was meant to tally with a conſcientious diſcharge of his duty. This however he thought fit to intimate, if it was their Lordſhips opinion, that the bill ought to be ſent to a committee, he was determined not to oppoſe it in any future ſtage.

The learned Prelate had, in his opinion, very properly diſtinguiſhed between the well founded claims of innocence and the puniſhment that ought ever to await guilt; and while he urged the propriety of withholding relief, when it did not ariſe from guilt, antecedent to the knowledge of the party injured, *id eſt*, the huſband, endeavoured to apply that principle, by confining, in the preſent inſtance, the relief to the party injured, and precluding thereby and defeating the views of the guilty perſon, which the learned Prelate ſaid, for ought that appeared to him, was the principal motive that induced her to that infamous conduct, and finally, to prevent her from enjoying the advantages ſhe promiſed to reap from it, that of an ample ſettlement.

This, he confeſſed, was plauſible, and ſeemingly founded in diſtributive juſtice, but he much doubted of its practibility, agreeably to the principles of law and the eſtabliſhed rules of adminiſtrating this ſpecies of judicature, or rather legiſlation, in that Houſe. Suppoſing it however for an inſtant, that no obſtacle, as he was about to ſuggeſt to their Lordſhips, ſhould ſtand in the way, he doubted much of the equity of ſuch a procedure, under the ſtrong circumſtances to which he had ſo often alluded in the courſe of his ſpeech. He would not venture to ſay of actual premeditated colluſion, in all its parts and circumſtances, but moſt clearly of ſubſequent mutual conſent. Mr. and Mrs. Gooche came to their Lordſhips bar as petitioners, or ſuitors, whoſe prayers, claims, and reſpective rights, were clearly ſeparate and diſtinct. It was evident at all events, let the tranſaction have originated where or how it might, there was one point which could not admit of any controverſy, that Mr. Gooche had previouſly agreed to certain arrangements; in return for which, Mrs. Gooche undertook to furniſh him with theſe proofs, which were neceſſary to effect the diſſolving of the marriage contract,

tract. The criminal proofs were, the value received on one side; a provision for the wife was the valuable consideration to be received on the other; it would consequently be inequitable, as well as repugnant to the known principles and rules of law, to extort confessions under the idea of good faith, which were afterwards to be solely employed to the advantage of the other party, and to the detriment of the party confessing.

But independent of the impropriety, or rather actual injustice, of carrying into execution one part of the consentaneous transactions, should the learned Prelate's ideas prevail, he looked upon it that such a scheme was totally impracticable, were the established mode of proceeding in that House to be conformed to respecting all acts of legislation, and he begged permission to make himself perfectly understood on this part of the question.

The bill, as presented to that House was a bill upon certain facts therein stated, and offered to be proved in order to lay a ground for the dissolving the marriage of the parties, to give them leave to marry again, and to make certain a provision for the petitioner's now wife. The bill is read a first and second time, and the motion made by the learned Prelate is to send it to a committee. So far the established mode of proceeding is strictly adhered to; but an exception being taken to the conduct of one of the parties, namely Mrs. Gooche, that she committed the adulterous acts which have been proved on her, in order to give efficacy to this bill, and of course to marry again; and suspicions, not amounting to proofs, having been suggested against Mr. Gooche by his friends or agents, that he had been privy or consenting to those acts, or had previously consented to their commission, the learned Prelate, eager for justice, and in order to discriminate the guilty from the innocent, strikes out what appears to him a middle path. He recommends to send the bill to a committee, in order to cure the original defect, that of permitting the presumed guilty party of profiting of her own wrong, which he presumes will remove all farther objections to its passing. He begged leave, however, to set the learned Prelate right, respecting one thing which he seemed to have overlooked: The bill, agreeably to their Lordships mode of proceeding, could not be amending in the committee; the principles of the bill was directed to three objects; to dissolve the marriage, to give leave to marry again, and to make a provision for Mrs. Gooche. This constituted the whole of the principle of the bill, which had already received their Lordships sanc-

tion. The principle, it was true, might be modified; it might be enlarged and extended; by the introduction of new clauses, but could never be altered; consequently there was no other alternative now left but to pursue the principle of the bill faithfully; or, by withdrawing it, begin *de novo*, and frame a new bill upon the principle recommended by the learned Prelate.

He had long before he had the honour of a seat in that House, and too often since, beheld with no small degree of dissatisfaction, the manner and grounds of procuring divorces in that House, and was sorry to say, that they frequently approached to the ludicrous, if not the downright ridiculous, and in every sense might be well deemed unbecoming the dignity, the gravity, and justice of that House; and in fine, were a disgrace to the legislature itself, which should never, upon any account, be put in situations tending tr excite levity and ridicule.

No person could entertain a more proper respect, and even veneration for ancient forms than he did; they were generally founded on wisdom, and well calculated to promote the ends for which they were instituted. When, however, the powers thus created, were perverted or abused; when the real efficient purposes were no longer sought or attainable; he must confess, his respect and veneration decreased in exact proportion to the extent and magnitude of the evil superinduced or permitted.

Parties, for instance, came to that House, and the other deliberative branch of the legislature, for relief, arising from some misfortune which could in no other manner be palliated or removed. The ground of their application, under circumstances similar to the present, was the commission of a criminal act in one of the parties; too often within the previous knowledge of the party deemed innocent, and not unfrequently, he feared, upon agreement and with pre-concert: In such cases, would any noble Lord who heard him, rise and gravely assert, that either party could be deemed innocent? he was persuaded, that not one of their Lordships would venture to go that length. This, in his apprehension, was derogatory, if not directly subversive of every principle of technical or substantial justice, or virtue and sound morals, and of domestic happiness.

Such a mode of proceeding was to the last degree unbecoming the dignity of the British legislature. It was an improper exercise of what he deemed an improper power, though

though it had even been more wisely exercised. The grounds of relief ought to be founded in the law, not made to originate with the legislature. The legislature were competent to form a law for the purpose; but farther than that he would never wish the legislature to interfere, or that their opinions should opperate upon crimes so as to distribute rewards and punishments. The power which ought to give relief, should be a judicial power created by law, and exercised agreeably to the ordinary dispensations of justice, where every man injured would come upon equal terms; and where nothing could be given or with-held farther than what the law or laws in being had actually and specifically prescribed.

He did not wish to impeach the laws of the former times; but having turned his attention pretty fully on the subject, whether his judgement was well concieved or not, he trusted what he had taken the liberty to submit to their Lordships would not be deemed totally impertinent; if however, in the present instance, he should have the misfortune to differ with their Lordships, it would be his duty as well as inclination to abstain in future from pressing his crude, though well-intended ideas on the House.

The learned prelate seemed to be of opinion, as a divine, that the marriage bonds were dissoluble. He heard the learned prelate with great attention, and should feel a proper diffidence, when he dissented from him, on a subject of this kind; yet, if the learned prelate meant to maintain it, as a general principle, connected with the present mode of giving that principle effect, as in the case of passing modern divorce bills, he doubted much of the propriety of both the principle and of carrying it into execution; and that because the proof of individual guilt, in numerous instances, created the evil. When he said this, he wished to be understood, that the intention of separating suggested the means, the act of adultery itself, which was repugnant to the principle of all found legislation, namely domestic peace, good morals, and family union. He would appeal to every noble Lord who heard him, whether constituting a criminal act, as the only medium of relief, was not the strongest possible incentive to the commission of it under certain circumstances? and whether it was not probable, that in many cases, the prospect of a final separation did not operate as an encouragement to these beginnings, which experience has often proved have gradually led to more serious and criminal consequences.

 There

There might, it is true, be possible cases, in which a judicial power, as he had already observed, properly constituted, might be enabled to give relief; such as incurable disagreements, fixed aversion, and many other untoward accidents, which sometimes unhappily arise in the married state, but the law, he would contend, which might create such a tribunal, ought to have specially in view two points; the preservation of sound morality, farther strengthened and confirmed by the sanction of religion.

A very extraordinary species of commentary had gone forth*, upon what had fallen from him, on the present subject, on a former day; and an absurdity in conclusion had been endeavoured to be fixed upon him in consequence thereof. It was represented without doors, as if it had been maintained in that House, if a woman had been guilty of a criminal act, and concealed her shame in several instances, but had at length been detected, such detection would be a good ground for the husband to apply for relief; but that when she committed a similar act openly and publicly, to the disgrace of her sex, and invited persons to be witness to it, that the injured husband ought to be precluded all redress. This was a very unfair manner of stating, or rather misrepresenting his arguments and his words. No such expression fell from him; no such argument ever entered his mind; nor could, of course, what he said admit of so unjust and absurd a conclusion. It was not because Mrs. Gooche had acted openly and avowedly in the shameful manner she had done, and not by chance, inclination, stealth, or from passion, but because she actedly openly for the purpose of laying a foundation, such as would insure her the attainment of the great object of her wishes, and, for aught that appeared satisfactorily to the contrary, that of her husband likewise.

His Lordship, after several other arguments, all tending to convey his hearty disaprobation of the bill, as well as of granting divorces by an immediate act of the legislature, added, that the event on the present occasion, be it what it might, he should have the satisfaction of having discharged his duty to their Lordships, and the public, by setting his face openly against a custom, which he was firmly persuaded had proved within the last century so destructive to morals and sound religion,

* Alluding to some observations made on his lordship's speech on the 19th, in the news papers.

religion, and had in infinitely more inftances than appeared either to that Houfe or the public, proved fo deftructive of the happinefs of married people, their parents, children, friends, and relations.

The Bifhop of *Rochefter* (Dr. Thomas) aknowledged, that if he had entertained any doubts upon the fubject, the learned Lord on the woolfack had compleatly moved them, both as to the impropriety of fending the bill to a committee, and therein introducing a new principle, and likewife of the bill itfelf, indenendant of any collateral confideration. Under this impreffion, he therefore rofe to declare his intention of giving the right reverend prelate's motion a direct negative.

The Bifhop of Rochefter.

The bar was then cleared, and the Houfe divided: Contents for committing 10; not-contents, 9.

The bill was acordingly committed for that day fortnight, the 12th of March.

February 27.

Private bufinefs.—Adjourned till Monday.

March 5.

Private bufinefs.—Adjourned to the next day.

March 6.

Private bufinefs.—No debate.

March 7.

Public bufinefs, in courfe.—No debate.—Adjourned till Monday.

March 12

Lord *Edgecombe* took his oaths and feat in the houfe, on his new dignity of Vifcount Mount-Edgecombe, of Valetort, in the county of Devon. His Lordfhip was introduced by Black Rod and Garter, between the Vifcounts Hampden and Wentworth.

Ld. Edgecombe.

Several public and private bills received the royal affent by commiffion.

The Bifhop of *St. David's* then moved the order of the day, for the Houfe to go into a committee on Gooche's Divorce-Bill. The Houfe accordingly adjourned during pleafure, and Lord Scarfdale took his feat at the table.

The Bifhop of St. David's.

The *Lord Chancellor*, as foon as the title of the bill was read, came to his place, and fpoke againft the principle as

The Lord Chancellor.

 well

well as provisions of the bill, recapitulating the whole of the evidence, as on the two preceding days, and making several pointed observations upon it as he proceeded.

The Bishop of St. David's. The Bishop of *St. David's*, as on the former day, expatiated much on the very singular hardship Mr Gooche must labour under should the present bill be thrown out, and in consequence thereof, so ill treated and injured a man be debarred all future redress, and compelled to live with an abandoned woman: and as the learned Lord's arguments seemed to rest chiefly on a presumed collusion or pre-concert between the parties, he thought, in order to clear up that point to the satisfaction of their Lordships, it would be very proper to call Mr. Woodcock, Mr. Gooche's agent, to be again examined at the bar.

Mr. Woodcock was accordingly interrogated as to several particulars, and seemed to return very satisfactory answers, so far as he was acquainted with the transaction as an agent.—Being ordered to withdraw,

Lord Abingdon. The Earl of *Abidgdon* rose, and spoke in favour of the bill, strenuously contending, that it did not appear by any part of the evidence that Mr. Gooche acted in pre-concert, or was pre consenting to his wife's infamous conduct.

A general conversation now arose, which continued for some time, and which contained little more than the mere recapitulation of the former arguments.

Lord Chancellor. At length, the first enacting clause for dissolving the marriage of the parties being read, the *Lord Chancellor* spoke against it, and demanded a division. The committee being counted, there appeared for the clause, contents 13; not-contents 14.

His Lordship then moved, that the House be resumed, which was agreed to without a division; so that after three days warm debate, the bill was rejected, and rejected precisely by an equal majority to that which voted for sending it to a committee on that day fortnight.

March 13.

Private business.—No debate.

March 14.

The Earl of Radnor. As soon as the private business was over, the Earl of *Radnor* rose, and moved the second reading of the bill for obliging all officers serving in the militia, to deliver in their qualifications, agreeable to the several acts of Parliament passed for the regulation of the militia in that part of Great Britain called England

land, to the clerk of the peace in each county, where they respectively served, with a particular account of the nature of the estate, description, &c. His Lordship in support of the bill observed, that the laws already in being had proved defective, and great numbers of unqualified persons were admitted; by which means, instead of being a constitutional defence, as was first intended, by putting arms into the hands of those, who were the natural and fittest defenders of their own property, numbers of half-pay officers, and other who had no attachment either by birth or possession to the provincial regiments, had been appointed to commissions. Hence the militia, as to every purpose but that of mere defence, differed very little, if at all, from a standing army. He begged however, to be understood, that he had no objection to the mode of appointment farther than as it contradicted the original intention of the first framers of the malitia laws, and of every subsequent law enacted for the same purpose. He had no objection, for instance, to the employing half-pay officers in the service of their country; but he would have them properly employed; he would have them either attached to the corps to which they formerly belonged, or incorporated into the new levies. He felt equally as to those gentlemen who had never before served, but who were not entitled to serve in the militia, under the present exhisting laws. If they wished to serve their country, and had friends, they could not fail of obtaining commissions. If they had not sufficient interest to obtain commissions, nor had money to purchase, he would appeal to every noble lord who heard him, if there could be the least hardship in compelling them to quit a service from which they could derive no possible advantage; but, on the contrary, would suffer a material injury, in spending so many years of the most valuable part of their lives to no manner of business, thereby ufitting themselves, as soon as the militia should come to be disbanded, for any profitable or advantageous pursuit. They would be gentlemen, or idlers, without the means of supporting the character; and, in short, from being probably useful members of society, they would become a burden to their friends. He did not mean to confine the intended reform to the subaltern officers only; he believed that the abuse had in many instances reached higher; and that several captains of companies had not a qualification, which if inquired into would make them eligible even to be appointed subalterns. On the whole, he trusted noble Lords would agree with him, that the original intention of the militia laws ought to be strictly pursued, or, that all restrictions should be removed, and the militia in that

that instance, as well as in every other, put upon the same footing with the military.

Earl Gower

Earl *Gower* rose, and in a short speech, confirmed the reasoning of the noble lord who spoke last, he acknowledged that what had been urged by the noble Earl, carried with it great weight. The principle and spirit of the militia laws were such exactly as his Lordship had described, but he doubted much of the expediency of the noble lord's bill, at any time pending the war, but at this season, he was perfectly satisfied, that any material change would prove very injurious to the service.

It would in the first instance prove extremely troublesome to those gentlemen who were really qualified, to deliver in proofs and specifications in the manner proposed by the bill. Great numbers of the officers were quartered in the most distant parts of the kingdom, from the places of their residence, and where of course their property was situated. Many obstacles might arise to impede, or render at the best disagreeable, such a specification of property to those nearer home, or even on the spot. But his prime objection was, upon another more general ground, the advanced period of the session compared with the time, possibly the militia might be called upon to go into camp or into garrison. If the law was to be strictly enforced, there was no doubt but numberless resignations would follow; yet that was not all, those commissions must be filled up and other persons appointed in their room. Here then were several difficulties to be surmounted. One was, that dismissing persons already trained to the service, and substituting others in their room who had every thing to learn; this it was true, might be construed into a disapprobation of the principle of the bill, but he did not mean to go farther than saying, that the present season, not very far distant from the eve of a campaign, was a very improper time for so general and extensive an alteration. He was not then prepared to finally decide whether or not such an alteration ought ever take place in a time of war, but he was fully prepared to say, that it ought not to take place in the middle of the month of March, when we could not tell how soon we might be attacked by our numerous and very formidable foes.

The other point, when connected with the foregoing, was a matter, in his apprehension, of very serious consideration. He trusted, that it was already sufficiently understood, that though the places of those officers who could not prove their

qualifications

qualifications, or would not perhaps give themſelves the trouble, would not be ſo well filled as at preſent, and that for the reaſon already aſſigned, that ſuch as had ſeen ſervice were preferable to ſuch as had not. But ſuppoſing this to make no material difference, nor to be productive of any inconvenience; he wiſhed to preſs the difficulty on their Lordſhips' minds, which would reſult from filling up thoſe vacancies, and the deſcription of men who would be called upon to fill them up; men of ſmall property and of induſtrious habits, many of them with large families, who drew their chief ſupport from the induſtry of the perſons who would be thus called upon. He ſhould ſay nothing of the increaſed expence of living, and of a ſubaltern officer being obliged to maintain himſelf in one part of the kingdom, and his wife and a numerous family of children, perhaps at two or three hundred miles diſtance, in another part of the kingdom; and it might be attended with a farther evil, and he believed often would, if the perſon thus deſcribed ſhould be in any buſineſs, the carrying on of which would require his own perſonal care and attention; for inſtance, if engaged in any manufacturing or mercantile buſineſs, or a gentleman farmer, &c. the diſtreſs and injury in ſuch a caſe was eaſier imagined than deſcribed, it was therefore well worthy of their Lordſhips' attention, whether it would not be better to prefer as an ideal evil to actual injury and inconvenience.

He begged however, before he ſat down, to be underſtood as by no means wiſhing to put a perpetual negative upon ſuch a bill, means might be deviſed to remove every one of the inconveniences which he had taken the liberty to point out; whenever ſuch means were propoſed, he ſhould cheerfully enter into a conſideration of them. Some things had ſtruck him on the ſubject, which he flattered himſelf, when properly digeſted, might accelerate the object the noble Earl had in contemplation. But as matters then ſtood, and under the manifeſt difficulties and ſtriking inconveniences which had ſuggeſted themſelves to him, it was impoſſible for him at ſo critical a moment as the preſent, to give his aſſent to any meaſure which would work ſo great an alteration in the militia force of this kingdom.

Duke of Mancheſter

The Duke of *Mancheſter* ſaid, he perfectly agreed with the noble Earl who brought in the bill, that the appointing unqualified perſons to commiſſions in the militia, was no leſs againſt the letter than directly repugnant to the ſpirit of the militia-laws or ſyſtem, of having an internal force for the defence

fence

fence of the kingdom, which force was to be placed under the command, direction, and controul of the actual owners of the soil. He lamented the defect in the laws already in being, which declared, or rather described, the proper persons who were in their respective ranks to share that command; but so it was, that the law wanted sufficient sanctions to give it effectual operation.

He thought it his duty to say so much, and the more so, as he had at a very early period of his life paid particular attention to the militia; his situation, as Lord Lieutenant of a county, rendered it an act of duty, he might add, it became with him an act of pleasure as well as duty; but he must add, he was fully satisfied, that every thing advanced by the noble Earl in the blue ribbon, who spoke last, convinced him more and more, of not only the impropriety or inexpediency of insisting upon qualifications, but the actual impracticability of supplying the places of those officers who would, if the noble Earl's bill were to pass, be dismissed from the service. He did not mean to say, that such a thing was absolutely impossible, because there was a law in being for the purpose, and it might be well supposed that the legislature would not, nor had not enacted an impossibility; but he would say, that it was impossible in his conception, to enforce the law rigidly, in the manner and to the extent proposed by the noble Earl, without creating so many difficulties and obstructions as must prove highly detrimental to the militia service in general.

He would at any time hereafter, most readily co-operate all in his power with the noble lord towards effecting so desirable an end as his Lordship professed to have in view; but for the reasons urged by the noble Earl in the blue ribbon, and the many obstacles which he foresaw would be thrown in the way, even of carrying the present intended law into execution, as well as those already in being, not choosing to give the bill a direct negative, he wished that it might be either withdrawn, postponed to some distant day, or disposed of by the previous question.

Earl of Coventry.

The Earl of *Coventry* expressed himself nearly to the same purport of the two noble lords who spoke before him, and expressed a wish that the second reading of the bill be deferred till that day three months.

Lord Chancellor.

The *Lord Chancellor* put the question, that the said bill be read a second time on that day three months; which was agreed to without a division.

The

The Earl of *Radnor* rose a second time, and moved an address to his Majesty, desiring that his Majesty would be graciously pleased to give directions, that there be laid before that House a return of all the qualifications sent in to the respective clerks of the peace, &c. by officers serving in his Majesty's militia forces.

Earl of Radnor.

The Lord *Chancellor* came from the woolsack to his place, and opposed the motion; said it would give a great deal of unnecessary trouble, and would besides create an alarm throughout the whole militia of this kingdom. By the disposal of the bill on which he had just put the question, it appeared to be the sense of the House, that no farther proceeding was to be had concerning it during the remainder of the present session, consequently the noble lord's motion could answer no purpose. If at any future period, noble lords should turn the affair in their minds, and coming properly prepared to enter into a full discussion of the subject, and ready to devise means, which while directed to the particular object, would at the same time provide for the inconveniencies pointed out by every individual lord who spoke, but the noble Earl who made the motion, it would be time enough to move for the list; but to give trouble without any direct intimation that such means had been discovered, or were meant to be resorted to, in his apprehension, would be no less nugatory than improper. Such being his ideas, he found himself indispensably bound, as an act of duty, to oppose the noble lord's motion.

Lord Chancellor.

The question was then put, and the motion negatived without a division.

Adjourned to Monday.

March 19.

Prayers being over, Lord Middletown was introduced in the usual form, and took the oaths and his seat in that House, on his recent accession to that title.

The Earl of Rosebury and Lord Say and Sele likewise took the oaths and their seats.

As soon as the private business was finished Earl *Ferrers* rose, and made several observations on the present alarming increase of Roman Catholics in this kingdom, which he endeavoured to prove, from the comparison of three different computations made at three different periods. In 1717, he said the number of Roman Catholics in the county of Chester, upon a fair calculation, was 10,000: in 1767, upon a similar estimate, they

Earl Ferrers.

had arisen to 25,000; and according to the late computation made at the interposition of Parliament, they amounted to upwards of 27,000. His Lordship thought it fair to argue from this particular district to the generality of the kingdom, and therefore concluded that the number of Roman Catholics upon the whole must have been increased more than double within the period mentioned. He considered this as so dangerous to the religious establishment and domestic security of this country, that, with their Lordships permission, he would bring in a bill for stopping the increase of this growing evil, and particularly imposing some severe penalties upon any attempts on the part of Papists to make converts to their faith; and likewise to make a strict prohibition against their teaching in schools of any denomination. If the sense of the House should be with him, he meant to move that their Lordships be summoned for Wednesday sevennight, for the purpose of resolving itself into a committee, to consider of certain propositions calculated to restrain the farther growth of Popery within this kingdom.

He trusted, that their Lordships would give him the credit he deserved, when he assured them, that his motives were not founded in a false zeal or intolerant spirit; an inclination to oppress or persecute. So far from it, that he was clearly of opinion, that many of the laws now in being were both cruel and impolitic, so much so, that such had been the moderate and lenient disposition and conduct of government that the whole code was become a dead letter. It was in order to strike out a middle path that he presumed to give their Lordships the intended trouble, for the purpose of revising those laws, or rather repealing all the penal statutes now in being against Popery, and passing a general law in their stead, which should have two special objects in view; the protection of the people, professing the Romish religion, in the free exercise of it, and of their civil liberties, and property; the other, by providing such wholesome restrictions as might promise to prevent the farther increasing the growth of Popery. He would wish to have such a law as would be effective, as would not clash with the established rules of humanity and justice; and yet such as would defeat every attempt to propagate a religion, which from its principles, tenets, &c. held out strong temptations to the weak, the credulous, and the ignorant. He would wish to see less rigour and more efficacy introduced into the laws for preventing the growth of Popery; for although he was not very easily

easily led to be alarmed by bugbears, he could easily foresee by the documents on the table, and to which he had referred, when he first rose, that an evil, trifling and comparatively small in its first appearance might increase, and gain strength sufficient to produce consequences of a very serious nature in its progress.

Should none of their Lordships oppose his intentions, he meant as soon as he could learn the sense of the House on the subject, to move that their Lordships be summoned, on Wednesday the 29th instant, to take into consideration the propriety of repealing all the penal statutes against Roman Catholics, for the purposes already mentioned.

The Bp. of Chester.

The Bishop of *Chester* (Dr. Porteus) said he had no intention to oppose the noble lord's design of introducing a bill for checking the growth of Roman Catholics; but as the county of Chester had been particularly alluded to, he thought himself under some necessity to explain to their Lordships the true source of the increase mentioned. He had made calculations as well as the noble lord, and acknowledged that, as to the general result, his accounts very nearly corresponded with those which had just been stated; but though he had every reason to depend upon that calculation which was made in the year 1767, and also on that subsequently formed in 1780, yet he had various motives for disputing the accuracy or authenticity of the first estimation made in 1717, which he believed to be very vague and uncertain. If there was no other argument than this, against the conclusion which had been drawn, that the number was increased more than double, yet that would be of considerable validity, as it would shew the House, that though this conclusion was not necessarily false, yet it was probably not true, and being upon the whole by no means to be confided in, nothing could be fairly inferred from it. The circumstance, however, to which he principally referred was this, and a very simple though cogent one it was, the immense increase of population which had lately taken place within the diocese of Chester. This increase, since the year 1717, was such as exceeded all belief, and of itself constituted a sufficient explanation of the alarming proposition stated by the noble lord. If the number of the inhabitants in general had been so considerably increased, it was plain the Roman Catholics must have increased in a proportionate degree, consequently, any arguments built upon a partial increase of the Roman Catholics within the diocese of Chester, unless accompanied with stating in general the progress of

population, muſt be founded in error. As to bringing in a bill for preventing the converſion of perſons to the Roman Popiſh perſuaſion, that, in his opinion, was unneceſſary, as the ſevereſt penalties were already denounced by the law of the land againſt any man who ſhould make ſuch an attempt, it being even a capital offence in a father to conſpire with a Popiſh prieſt in producing ſuch a converſion. With reſpect to the ſchools, he was of opinion the penalties and impediments to them were ſufficiently ſevere. No Roman Catholic was permitted to teach a Proteſtant child; as for their teaching the children that belonged to their own faith, he ſhould never concur in depriving them of that, as he conſidered it to be totally inconſiſtent with juſtice, humanity, and perhaps policy, to impoſe ſuch a reſtriction. Upon the whole, however, he had no objection to the bill being brought in at the time propoſed by the noble lord, but he would juſt take the liberty to ſuggeſt, that at this period, when the religious ferment which had been recently excited in the kingdom was hardly quieted, it might not perhaps be quite politic to revive the ſubject.

He wiſhed, the noble lord however, before he ventured to commit himſelf upon the ſubject, to perfectly inform himſelf, leaſt it ſhould be found, that the very argument which he ſtated might make againſt his concluſion; for if after numbering the Proteſtant inhabitants, as well as the Roman Catholics, it ſhould be found, that the increaſe of the latter was not proportionably rapid with the former, it would amount to a demonſtration, that the preſent penal ſtatutes, though become a dead letter from the lenient temper of government, had effected the only purpoſe for which ſuch laws could be paſſed, the preventing the growth of Popery. He wiſhed likewiſe, before he ſat down, to remind the noble Earl, that although he was far from wiſhing or deſiring to ſee thoſe laws rigorouſly executed, becauſe repugnant to the firſt principles of humanity, and the tolerant ſpirit of the Proteſtant church eſtabliſhed in this kingdom, he was not prepared to ſay that he would aſſent to a total and indiſcriminate repeal of them; for if penal ſtatutes could be defended upon any ground, it muſt be that of preventing greater evils, and ſo far he believed, if from no other motives, the evils they were intended to prevent had been in a great meaſure entirely removed.

Earl Ferrers

Earl *Ferrers* ſaid, he was as averſe to making experiments, or wiſhing to perſecute as the Right Rev. Prelate; he thought

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he had fully explained himſelf upon that ſubject when he firſt roſe, and as to making experiments, he was not ſo ſelf-ſufficient as to take ſuch a taſk upon himſelf, unaided or unaſſiſted by others; he roſe only to throw out a propoſition to the Houſe for its opinion, particularly that of the Right Rev. Benth, whoſe advice and aſſiſtance, upon a ſubject of ſo much importance, he made no doubt he ſhould be able to obtain. By what had now fallen from the learned prelate, he was given to underſtand what the temper of that Bench was; and on that ground only, more than from any perſuaſion or conviction brought home to his mind by what had fallen from the learned Prelate, he was willing to acquieſce in his Lordſhip's ſentiments; beſides this, there were other reaſons which operated upon and induced him to determine to change his intention of troubling their Lordſhips on the day mentioned. It was a ſubject well worthy of their Lordſhips' attention, and though he ſhould not take any ſtep in it during the courſe of the preſent ſeſſion, he heard no objection ſtarted againſt ſuch a law as he had ventured to ſuggeſt, ſufficient to prevent him from taking the affair up at ſome more fit and convenient opportunity.

The Houſe adjourned to the next day.

March 20.

This day the loan and lottery bill was read a ſecond time, and ordered for a third reading the next day.—Adjourned.

March 21.

As ſoon as prayers were over, the order of the day for the third reading of the loan bill was moved; which, as ſoon as the title was announced, called up

The Marquis of *Rockingham*; his Lordſhip ſaid, he was totally uninformed, whether the bill was or was not before their Lordſhips till the evening before laſt, which was the day it was brought up from the other Houſe, preſented and read a firſt time. Yeſterday he attended in his place, in order to deliver his ſentiments on it, upon the ſecond reading, but the Houſe was ſo badly attended, that he did not think it proper to ſpeak to empty benches, and therefore poſtponed what he had to ſay to this day upon the bill's going to a committee; but here again he found himſelf diſappointed, for he underſtood ſince he came into the Houſe, that the bill had not been committed, but that every neceſſary form had been diſpenſed with, and the bill ordered to be read a third time

The Marquis of Rockingham.

time this day, contrary to all precedent, ufage, and rule of parliamentary proceeding refpecting public bills, which fhould be publicly committed in the body of the Houfe.

But he did not mean to reft his oppofition at all upon the matter of form, his objections would be directed againft the fubftance of the bill, the manner in which it was framed, the corrupt fource from which it originated, and the various mifchiefs and evils with which it was pregnant, whether confidered in a retrofpective or profpective view, or as fraught with prefent mifchief. The loan to which their Lordfhips were going to give a fanction, by paffing the prefent bill, was one of the moft corrupt in its formation, the moft fhameful in its progrefs, and as far as the confequences could be fuppofed to extend, the moft injurious to the public that could poffibly be conceived.

After this introduction, which he pronounced with much warmth, and with uncommon energy of voice; his Lordfhip obferved, that the loan prefented two faces, the oftenfible or open one, and the concealed; the former being framed fo as to impofe upon the public within and without doors, and the latter to pillage them of their property; the one was the pretended bargain made by the Minifter with the fubfcribers, in behalf or under the implied faith of Parliament; the other, a private contract, made with certain favourite fubfcribers for the moft unjuft, becaufe the moft fhamefully corrupt, purpofes. To prove what he now afferted, he would ftate the terms of both loans, or rather the real and pretended terms of the fame loan, taking in two different points of view, in order that their Lordfhips might be enabled to judge how far he was, or was not juftified in the very harfh terms he had been obliged to beftow on it, when expreffing his difapprobation, he might indeed add his deteftation, of the whole tranfaction.

The Minifter's terms, as laid before Parliament, were as follow:

	£.		£.	s.	d.
150*l.* 3 per cent. valued at	58	per cent.	87	0	0
25*l.* 4 per cent. —	78	———	17	10	0
Lottery Tickets, four to each 1000l. or 12l. upon every 1000l. ftock fubfcription, computed at	13	———	1	4	0
			£ 105	14	0

Here

Here then was the bonus or profit ſtated by the Chancellor of the Exchequer, in the face of the nation, of five pounds fourteen ſhillings; on the other hand, he begged their Lordſhips to attend to the real, not to this fallacious ſtatement, in which he would prove beyond queſtion, that allowing the value of the ſtocks to have been fairly valued, the bonus was upwards of eight and a quarter, if not full eight and a half per cent. inſtead of five and three quarters, as had been ſtated by the noble Lord, the Miniſter, in the other Houſe. For to the foregoing were to be added the intereſt from the firſt of February to the day of the payment, a period of ſeven weeks, at three and four per cent. which on each hundred pounds ſubſcribed, amounted to one hundred and ſeventy-five pounds ſtock, or about five pounds ſeven ſhillings per annum, which within the period alluded to, would on that account alone put into the pocket of the ſubſcriber nearly eight ſhillings. There was a diſcount upon each prompt allowed, and finally all thoſe ſubſcribers who ſhould make the laſt payment on or before the middle of September, were to be paid intereſt throughout, from the firſt of January. Taking therefore the bonus as ſtated by the Chancellor of the Exchequer, and adding the other advantages he had now mentioned, ſuppreſſing all fractions of a ſhilling, the real bonus would ſtand as hereunder:

	£	s
150*l.* 3 per cent. ——	87	0
25*l.* 4 per cent. ——	17	10
Lottery Tickets, ——	1	4
Intereſt accruing from the 1ſt of January till the day of the firſt payment ——	7	0
Ditto from the 1ſt payment till September, making all reaſonable allowances and deductions	2	6
Total	108	7

If any noble Lord, who heard him, could ſet him right, or point out any error he had committed in the foregoing ſtatement, he ſhould be much obliged to him to riſe; for unleſs he ſhould find that he had been miſinformed in his computations, he would take it for granted, that the whole had been faithfully and correctly ſtated.

Before he ſhould proceed any farther, he thought it neceſſary to take notice of ſome particulars, which aggravated the conduct of the miniſter, becauſe calculated to ſerve the ſub-

subscribers at the expence of the nation. By Castaign's Paper, the Friday before the 9th, the budget was opened, the 3 per cent. bore 58 and 59, and the 4 per cent. were done at 70. In the mean time a rumour of a peace was spread, which between that and Monday, the day the bargain was supposed to have been struck, rose the 3 per cent. to 60, 61, and even 62, and the 4 per cent to 72. Yet, though the noble lord himself acknowledged that there was some foundation for such a rumour, and even in his place ventured to say, that there was a prospect, or at least an appearance of a tendency to peace, instead of availing himself of that favourable opportunity, of making an advantageous bargain for the public, he rated the 4 per cent. at 70, and the 3 per cent. at 58, just as if no alteration in the state of affairs had happened, or that the stocks had not been at all operated upon by the rumour or prospect alluded to. There was another circumstance which deprived the noble lord of all apology, because in stating the progress of the bargain with the subscribers, he confessed, he had not intirely concluded it till Monday after, as his Lordship expressed himself, there had appeared to him a disposition in the belligerant powers tending to peace.

Such being the circumstances attending the loan, he thought himself fully justified, in asserting, that on the day the loan was submitted to Parliament, the bonus stated by the Chancellor of the Exchequer, of five pounds fourteen shillings the two pounds thirteen shillings arising from the prompts, discounts, and previous commencement of the interest from the first of January to the day of the first payment, with the depreciated value of the stock, added together, brought the bonus or profit up to the monstrous sum of nearly ten per cent. or one million two hundred thousands pounds premium; at least whether it might prove so lucrative to the subscribers, the nation would be obliged to pay that sum, for the loan of twelve millions, and besides an usurious interest of five and an half per cent. in perpetuity. He was aware of the answers which might be made in defence of the loan; one was, the market fixed the price, and that the necessity of the state made the bargain, and not the minister; that to be sure the bargain was a bad one, in one light, but a good one, when considered as the best that could be made in the present exigency of affairs. He was ready to admit both as general propositions, which could not be fairly called in question, or controverted; but that was the very point in issue between

those who negociated the loan and defended it, and those who considered it, at the best, an improvident bargain, and most probably a corrupt one. He denied, that there was a necessity of dealing with one set of men in preference to another, in order to enrich them at the expence of the public, or by plundering the public still more, to value the stocks one and an half, if not two per cent. under their intrinsic value. This formed the state of things, which he could never approve of, and a species of state necessity of which he would ever dispute the existance. He did not doubt, however, but the measure originated in necessity; he meant ministerial necessity; for notwithstanding the numerous places, pensions, contracts, and every other species of influence, in the gift or disposal of the minister; notwithstanding the last effect of a weak and unpopular administration, he meant the lavish hand with which honours were conferred, upon all sexes and description of persons, such was the folly, the madness, he might add the wickedness of the measures of government, that the minister found himself compelled to resort to this shameful waste of public money, to bring to his standard the corruptible part of his opponents, and to fix and persuade the wavering and doubtful among his friends.

What he had yet offered on the subject of the loan would be totally incomplete, if he did not point out some of the leading circumstances respecting its negociation and distribution; which he trusted, would serve to convince the greatest political sceptic that it was not only improvident, but highly corrupt.

He should for this purpose recur to the only ground on which it was attempted to be defended in the other House, upon the supposition already mentioned, that although a very disadvantageous bargain, it was the best that could be made. He would unsay every syllable he had urged to the contrary, if that was the case, and would now proceed to offer his reasons to shew it was not.

The amount of the offers made by those who wished to subscribe, he understood amounted to between 30 and 40 millions, who, in the language of the treasury, were deemed good men, or persons supposed to be able to perform their engagements, in case that any untoward accident should happen, which might depreciate the stock. This surely was a good ground for the minister to go to market on. He wanted to borrow a sum of money upon interest, and was willing besides to give a premium to the lender. If, as in the case of an individual,

who wants to borrow a thousand pounds, and must have it, that is, cannot at all do without it, and there is but one lender, there necessity is evident; for he submits because he cannot help it, and lies at the mercy of the money lender; but on the other hand, if when it is known, that his security is good, and that he has two or more persons ready to advance the sum wanted, his agent, if he be able or honest, will endeavour to make the best bargain in his power; he will treat with the money lenders severally, and close with the man who will advance the money at the lowest terms.

'Was that the conduct of the minister in the other House? did he propose terms to different persons? No such thing: He selected from among the subscribers a few men of great weight, and those he meant to serve, and give a preference to; and after going through all the idle forms of a mock negotiation, agreed to the terms they prescribed to him, or he wished to prescribe to himself.

But this is all assertion, it may be said. What proof is there that every means were not tried to make a good bargain for the public? Proof, he would affirm, little short of mathematical demonstration. For no specific bargain was made with any man. The minister came to Parliament, not on an actual contract with any particular man or description of men; he came only upon the faith of several offers amounting to upwards of 30 milions to be subscribed. What next? Why, when the persons who offered to subscribe, came to have the real sums entered before their names, it was discovered that four-fifths of the subscription was divided among the minister's friends, and a few great monied men; among, in particular, several of the members of the other House, clerks, mean and obscure persons, &c. while, on the other hand, some of the best names in the city were either excluded from the advantages accruing from so profitable a subscription, or did not get more than a third, a fourth, or fifth, of what they wrote for. He could not finish what he had to offer on this part of his subject, without stating the following case; either the minister foresaw the bargain would prove a very advantageous bargain to the subscribers, or that it was a precarious one, liable to great risque. If the former, he should have reduced the profit; if the latter, it was rather somewhat singular, that he should put those, whom he wished to serve, in a situation which might possibly render an intended act of friendship a misfortune.

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It was a matter of opinion no way material to his argument, whether members of the other House in trade ought to have had any part of the subscription; but if not in trade, or dealers in money, he believed it would be very difficult to persuade any man in his senses, that ten per cent. profit upon a loan would not answer every purpose of influencing their conduct as much as if it had been actually issued from the Treasury, consequently, the great numbers whose names appeared in the list, laid before the other House, and the much greater number whose names were concealed or covered, convinced him that the loan was negociated, and finally made with a view to bribe those who would not perhaps look for or receive a bribe in a direct manner.

He knew it was not parliamentary to speak of what passed in the other House; he would therefore say, that he heard the loan defended in a certain assembly on two grounds, besides those he had already recounted. One was, that if any benefit was likely to arise from a subscription of the kind, it was natural and proper that the minister should give a preference to his friends; and that loans had been generally understood, in former times, to be an engine of influence, and an appendage of administration, in order to enable them to conduct the affairs of government. To each of these he would give a specific answer, by demonstrating, that the fact having not happened, in reference to the period alluded to, it did not warrant the conclusion; and if it had happened, that its specific application in the present instance could not be mantained.

He had been of an age sufficient to turn his attention to public affairs during the last glorious war, and the glorious consequences which attended it; and could therefore vouch for the truth of what he was going to assert, during the administration of Lord Chatham, when the Duke of Newcastle presided at the head of the treasury. He had since refreshed his mind, by turning over such papers as enabled him to state correctly the facts he was about to mention.

The bonus or profits on the omnium of the loan of 1758, was but one and a quarter per cent. on two millions; in 1759, he believed at half per cent. discount upon four millions. In 1760 one and a half upon eightmillions; and the last three-quarters per cent, though twelve millions were raised. The next year the Duke of Newcastle went out of office, and it was not till 1763, the first year of Lord Bute's administration, that the minister, for the time being, ever

thought of extending his influence, by plundering the nation in the midst of those distresses which are always the concomitants of the state of war, during an administration in which a secret ove-ruling influence was introduced, the fatal consequences of which, he feared, would only cease or terminate with the overthrow of our constitution, if not the total destruction of the nation itself.

So far, he trusted the fact was disproved, which was a full answer to the inference drawn from it; but he begged leave to add, that the glorious and fortunate, spirited and wise administration which he had been speaking of, he meant when Lord Chatham was at the head of our councils, a Newcastle at the head of our finances, and an Anson at the head of our navy, wanted no aid or support from corrupt or secret influence,—influence from bribery on one hand, or secret intrigues on the other. The influence of that day arose from another source, from a well founded confidence in the wisdom of their measures, in a well earned popularity; in their spirited and vigorous plans, most happily and successfully executed; in an able and faithful disbursement of the public money committed to their care and management, and on the whole, rested on the only true basis on which national prosperity or success can ever safely be supported, a firm and fixed attachment to the constitution, and every blessing and security we enjoy under it.

Having touched upon a great variety of other topics of less consequence, he contended, that the minister in the other House had broke his faith with Parliament and the nation; and though he should not put a negative on the bill, he deemed himself called upon, as an act of duty, to testify his total disapprobation of a loan, which at a time of such public calamity as the present, when the utmost œconomy became necessary, wantonly and corruptly lavished at least a million sterling; and that, in his apprehension, merely for the purpose of influencing or bribing the representatives of the nation, in Parliament, to give their countenance and support to the continuance of a most wicked, impolitic, and ruinous war.

No reply was made. The ministers present looked at each other, but nothing more passed.

LORDS PROTEST, *March* 21.

The order of the day being read for the third reading of the bill, entitled "An act for raising a certain sum of money by way of annuities, and a lottery; and for consolidating certain

certain annuities which were made one joint ſtock, by an act made in the ſecond year of the reign of his preſent Majeſty, with certain annuities conſolidated by ſeveral acts made in the twenty-fifth and twenty-ſixth years of the reign of King George II. and in the fifth year of the reign of his preſent Majeſty,"

Moved, "that the ſaid bill be now read a third time." Which being objected to, after debate the queſtion was put thereupon; and it was reſolved in the affirmative.

The ſaid bill was then accordingly read a third time. The queſtion was put that the ſaid bill do now paſs; it was reſolved in the affirmative.

Diſſentient,

"Becauſe when a bargain, improvident in its terms, corrupt in its operation, and partial in its diſtribution, is negociated by a miniſter acting for the public, its having paſſed through the Houſe of Commons can be no reaſon for its paſſing without obſervation through the Houſe of Lords. Without waving our undoubted right of giving a negative to this or any other bill, we reſpect the principle of public credit too much to attempt at this juncture to exerciſe that right, though if we looked only at the enormity of the abuſe, the moſt direct oppoſition never could be more properly called for.

"Twenty-one millions are added to the capital of the debt for a loan of twelve; five and a half per cent. perpetual annuity is granted; ſix hundred and fifty thouſand pounds are to be levied in the yearly taxes upon the people. In ſuch a ſituation the moſt rigid œconomy ought to have been uſed, and the premium on the loan ought to have been reduced in proportion to the exhorbitance of the intereſt to be paid. Several circumſtances appeared favourable to the miniſter, if his object had been to ſerve his own ſupport. Beſides the proſpect derived from the beginning of a negociation for peace, it is allowed that treble the ſum ſubſcribed had been offered, and a very large part of that ſurplus by perſons more reſponſable than very many of thoſe who were admitted. In that ſituation, ſo favourable to the borrower, where the being permitted to lend was ſought with emulation, the firſt commiſſioners of the Treaſury choſe to make a bargain, opened at ten per cent. premium the dry after the loan.

"This

"This price was not the effect of mere popular opinion, or of artful management, but was grounded on the real value of the great body of the other stocks at the time, and was no more than what arose from a just relation to the rest. We are the most dissatisfied with this shameful prodigality of public money, by comparing it with the period when a strict and conscientious management of the public treasure at home became a foundation for the glory of our arms abroad. During the Duke of Newcastle's administration, on the several successive loans from the year 1758 inclusive, to the time of his removal from office, never exceeded one and an half per cent. at the opening; was generally less, and sometimes at discount. Yet the national credit was in vigour. During that time forty-three millions were borrowed. In those happy days, the ministers standing on national ground, were not in a state of servitude to any set of men, nor led, through a false system of politics, to aggravate the distresses of their country, by hiring a venal cry to personate the voice of the public, and to give support to the measures which had occasioned such distresses.

"It is not a matter of surprise to us, at a time when such things can be done with impunity, that lords of the greatest honour and ability have wholly discontinued their attendance. But it is not improper that those lords who do sometimes attend, should record their names in testimony of their strong condemnation of the terms of this loan, and of the motives which they conceive, dictated terms so very disadvantageous to the Crown and the nation.

ROCKINGHAM.
PORTLAND,
OSBORNE,
J. St. ASAPH,
DE FERRARS,
FITZWILLIAM,
BOLTON,
PONSONBY."

March 22.

This day his Majesty came to the House, and gave the royal assent to the loan, lottery, militia, and several other public and private bills; after which the House adjourned to Monday.

March 26.

Duke of Richmond.

Prayers being over, and the private business finished, the Duke of *Richmond* rose, and said, he understood that there

was

was a bill before the House for impowering the Colonels of the several militia regiments to enter into agreements with the substitutes, previous to the time of the expiration of the three years. This he said, might prove of very great injury to the militia service in general, indeed it struck him so forcibly, that as soon as he heard it he had posted up to town, understanding it was to be read a third time that day. He meant to move a clause on the third reading, and hoped that the House would so far indulge him as to postpone the order for the third reading till to-morrow; which was agreed to.

The order was accordingly discharged, and the House adjourned to the next day.

March 27.

Bishop of Chester.

Private business being over, the Bishop of *Chester* addressed the House in a speech of considerable length. His motive for rising now to trouble their Lordships was, in consequence of what had fallen from a noble Earl [Ferrers] on a former day, relative to the rapid increase of Roman Catholics within this kingdom in a few years. The noble Earl's speech on that occasion, had gone forth into the world, and might create an alarm, which he was enabled to affirm, and that with confidence, would prove every way unfounded. Since he had the honour of addressing their Lordships the last time on the subject, he made it his business to inquire more minutely into the facts, and was well pleased to find all his former arguments much strengthened, and in a manner confirmed, upon a full and comprehensive investigation of the particular and total numbers.

He then read several computations of the rapid increase of buildings and inhabitants within certain parts and districts of his diocese within certain periods, beginning early in this century, and so up to the latest accounts or returns he was able to procure, or which had appeared in printed books. In some places the proportion was a fourth, in others a third, an half; and in others again the numbers had increased four, five, six fold, or more, but he mentioned two in particular, which proved beyond question the rapid progress population has made in parts of the county of Lancaster. One was of Liverpool, which in the year 1700 contained but five thousand inhabitants, and in 1770 contained thirty five thousand and a considerable fraction; the other, a quarter of the town of Manchester, called Saltport, which contained only a few

hundreds

hundreds in the year 1719, and by the last return was found to contain eleven thousand souls.

After mentioning a great many particulars of a similar nature, he informed their Lordships, that he had exerted himself, as far as lay in his power to collect the most accurate accounts, some from printed books, others from the clergy within his own diocese; and had been tolerably successful in his inquiries relative to that part of it, called the Archdeaconry, where he found the inhabitants had within half a century increased forty thousand; and from such other parts of his diocese whence he had received returns, which did not include the whole, the remainder amounted to fifteen thousand: as far therefore as his inquiries had reached, he was able to speak with precision, that within the period he had described, the inhabitants were increased fifty-five thousand, and when the remainder of the returns came in, he doubted not but they would be found to be much more.

It had been said by the noble Earl, that the Roman Calics increased within the diocese of Chester two thousand, between the years 1767 and 1780. If however, it was recollected, that it arose from a general increased population during that period within that diocese, it would maintain the very contrary conclusion the noble lord wished to draw from it, for it would prove, that though they had increased, they had not increased in proportion to that of the Protestant inhabitants; besides, notwithstanding the Roman Catholics had increased in the diocese of Chester, he had it from such authority as he could safely depend on, that within the period mentioned by the noble lord, the increase of Roman Catholics throughout England was no more than fifteen hundred; in that point of view likewise, there was an actual decrease of the people of that persuasion throughout England, the diocese of Chester excepted, and there it had been fully proved that they bore no manner of proportion to the general increased population.

Earl Ferrers.

Earl *Ferrers* said, he had taken his information from the papers laid on the table, and consequently if he had mis-stated any thing the error was not imputable to him, but to the species of information laid before the House. He said, he was extremely glad to hear many things which had fallen from the learned prelate; and he was perfectly satisfied of the truth of what the learned prelate had advanced, being now fully convinced, that the apprehensions for the increasing growth of Popery, which he had expressed on a former day,

were in a great meaſure groundleſs, or ſo far unbounded as to render ſuch a meaſure as that he wiſhed to ſubmit to the wiſdom of the legiſlature unneceſſary for the preſent.

The order of the day was then moved, for reading a ſecond time the bill to enable juſtices of the peace to act in caſes of riots and tumults, without taking out their *dedimus poteſtatem*; an original writ iſſuable out of the Crown ſide of the Court of Chancery, the title of which imports a delegation of power from his Majeſty to the perſon to whom it is directed.

Lord Chancellor.

The *Lord Chancellor* left the woolſack, and obſerved, that it was always cuſtomary when any bill was brought into that Houſe, for abrogating an old law, or enacting a new one, for the perſon who moved the order of the day, if the bill had not been previouſly debated in ſome former ſtage, to aſſign his reaſons for wiſhing to change the law in the particular inſtance. In the caſe now offered to their Lordſhips conſideration, the noble Duke, [Mancheſter] who moved the order of the day, had neglected to comply with that form; which in deference to the legiſlature, was deemed eſſentially neceſſary. The bill now under conſideration coming perfectly within that deſcription, he begged the indulgence of the Houſe, while he ſhould enter into a ſhort explanation of the laws already in being, upon which the preſent propoſed bill would operate, as a partial repeal, whether they were conſidered as ſpringing from the common law, which was coeval with the conſtitution, or whether they had been ſanctioned by the legiſlature, or declaratory of the common law, as mandatory, prohibitory, or remedial, in inſtances where the common law was found to be defective. The acts by which juſtices of the peace were impowered, his Lordſhip ſaid, were of a long ſtanding; and in the courſe of ſeveral centuries which had elapſed ſince their inſtitution, the original theory was improved in ſuch a manner as to extend beyond any poſſibility of excellence, that our anceſtors, who firſt formed them, could have conceived; the acts were of ſuch conſequence, and of ſuch high authority, that they ought not to be curtailed or extended, except the moſt ſolid and well founded reaſons were adduced for ſo doing. The bill now before the Houſe he had carefully conſidered; he had read it with attention, and turned every probable conſequence of it in his mind, but it did not in any one part, convince him of its preſent neceſſity, or of its future utility. It appeared to him as a bill, which would injure rather than

promote the furthering of justice, or of those laws which the wisest, the ablest, and the most respectable men had for ages made it a study to enact for the public benefit. Here his Lordship gave a most excellent detail of all the essential clauses in every bill that passed respecting the power of justices of the peace, and in what manner those clauses directed them to act. His Lordship then observed that the intended effect of the present bill was to set aside the conditional forms prescribed by law, for impowering persons appointed justices of the peace to act and discharge the respective duties of their office. Returns were made by the Lord Lieutenants of the several counties, of persons qualified to be appointed justices. Commissioners of the peace were made out in consequence thereof, but only those could act who applied for the writ, called a *dedimus potestatem*, and who went through the regular, and he would add, essential requisites provided by the statutes enacted for that purpose; such as taking the oaths in court in the presence of the King's justices or judges, on their respective circuits in the several counties. This his Lordship observed, would be a very improper indulgence to be given to any set of men, however high or respectable; and his Lordship farther said, that the matter was not only of a delicate nature, in respect to its legal consequences, but it was very tender as to its constitutional result. In short, it was not a matter to be hurried through the House. His Lordship addressed himself particularly to some noble Lords, and said, he did not doubt but the bill would meet the concurrence of many who wished to be gentlemen justices; that is, to have the pleasure of authority without the trouble of doing justice.

His Lordship after several miscellaneous observations, made a direct application of them to the bill then under consideration. He observed, that the modern justices answered precisely to the ancient conservators of the peace, with this difference, that they had many new powers, and he might say personal jurisdictions, added to what the ancient conservators exercised or enjoyed. According to the common law, the sheriff was the principal officer within the county, as he was in several instances, and for several purposes at this very day. In all tortious transactions, in the apprehending felons, and in suppressing all riots, routs, and unlawful assemblies, he was authorised to call to his assistance the *posse comitatus*, or power of the county, to his aid. The same power was vested in the ancient conservators, as the sheriff could not be every where, those conservators exercised in their several

districts

districts similar authority; they could, like the sheriff, raise the *posse comitatus*, and call upon every man from sixteen to sixty, to assist in preserving the peace; they could upon view or information, repair to the place where the riot, rout, or unlawful assembly was collected, and proceed to disperse or apprehend the persons thus offending against law; and if no head of a corporation, magistrate, or conservator of the peace was present or to be found, the same power devolved upon the headborough, tithing-man, &c. even down to the petty constable.

It was needless to dwell farther, or to enumerate the various species of magistratical power delegated to, and exercised by the magistrates under the common law; but it was very material to hint at some of the innumerable additional powers, vested by a great number of acts of Parliament, in the justices of the peace. They were, within their several jurisdictions, impowered to call upon all manner of persons, to answer all manner of complaints; they were impowered to try all felonies not deemed capital, or of which conviction did not render the offender subject to the punishment of death; they were judges at the quarter-sessions on all prosecutions for assaults, batteries, &c. they could commit upon complaint, and give orders to apprehend all vagrants, suspicious persons, &c. they could inflict certain inferior punishments, in a great variety of instances too numerous to rehearse, and they were vested with a summary jurisdiction in an immense variety of other cases respecting property.

Having thus endeavoured to shew, that the modern justices of peace had many additional powers vested in him, unknown to the ancient conservator, he recited several clauses out of the acts passed in the reigns of Richard II. Henry IV. V. and VI. to shew that Parliament thought fit to arm the justices with every power necessary for the conservation of the peace; and among others, that of suppressing all riots, routs, and unlawful assemblies; and consequently, that the wisdom, as well as sound policy of our ancestors ought not to be wantonly set aside, which would certainly be the case, if persons not regularly authorised were permitted to act as magistrates.

But he would now proceed to answer the only arguments which, with all his industry, he could foresee would be urged for the present bill.

First, it might be said, that those who would not be obliged to take out a *dedimus potestatem*, agreeably to the tenor

of the present bill, might act in that particular instance only, the suppression of riots, routs, insurrections, &c. that the present bill would not impower them to act in any other respect, but for the purposes declared in the bill; and that it would impower persons of rank and fortune at all times, to preserve the peace of their respective neighbourhoods, which would never be the case, so long as by qualifying themselves, they would be liable to undergo all the laborious and fatiguing duties of a justice of the peace, which they must do if they should take out their *dedimus*.

On the first he would observe, what he before had more than once mentioned, that although no slave to ancient forms, he should ever look with reverence and respect towards those forms which were coeval, he believed, with the constitution, and had stood the test and approbation of ages. Upon this ground, therefore, though no other reason existed, he should, for his part, be extremely cautious in doing what our ancestors, since the commencement of legal memory, never thought of doing; for by the common law, no conservator of the place could act till he had received his *dedimus potestatem*: it was indeed the very act which created him a conservator, and meant no more than a short address to such or such a person, to keep the peace within a certain county, town or district; besides which, there were to the instant he was speaking, laws regularly enacted for the same purpose, the most ancient of which were upwards of four hundred years standing.

The next probable argument in favour of the bill, he presumed would be, that the persons entitled to act, would be only entitled to act in the particular instance of preserving the peace. Here again he was totally at a loss to know where the exact line could be drawn to separate or distinguish the powers and authorities to be exercised by a modern conservator and a modern justice; for either the power of the former must be limited and nugatory, or it must partake of the general powers of a justice of the peace: For instance, suppose that proofs were offered against a person or persons for intending to raise a riot or insurrection, in that case the persons to be authorised by this bill would either have a right to receive informations upon oath, a species of judicial proceeding, or their appointment would be nugatory. If the former, then the bill would create powers disclaimed by the promoters of it, or it would answer no end. How far their lordships were prepared to give their sanction to such a law, he would not

pretend

pretend to say; but he was firmly determined never to consent to swell the statute-book, by enacting a law which would be productive of no good, or which, if operative at all, would create powers contrary or repugnant to its professed design.

The last objection was, that gentlemen and persons of rank who had declined to take out the *dedimus*, would, if the present bill should be passed into a law, have an opportunity of exerting themselves in preserving the public peace; whereas, so long as the laws in being, which prevented them from acting in a magistratical character, without being liable to be called upon to discharge the duties of a justice of the peace, amounted almost to an exclusion. He only stated the possibility of such an argument being resorted to, because, if he should hear it gravely urged, or seriously insisted upon, it would be a sufficient reason to convince him that the bill ought to be rejected.

Not, however, having yet heard any thing offered in support of the bill, though he must confess he expected the contrary, he should reserve whatever else he had to say till an opportunity of entering more particularly into the subject might be afforded him. He would, however, just before he sat down, submit to the noble Duke, whether, considering the vast importance of the bill, of which perhaps his Grace was not aware, it would not be better to get rid of it by the previous question, or postponing it for three monts, instead of putting an absolute and direct negative upon it? he only suggested this as a matter of mere choice; for most certainly, if it should come to the question, he would give a negative to the second reading of the bill in some one shape or other.

Duke of Manchester.

The Duke of *Manchester* said, the object of the bill was to strengthen the hands of the civil magistrate, and to remove all pretence of calling in the military to aid the execution of the laws upon slight or ordinary occasions.

His Grace passed many handsome compliments on the abilities of the noble and learned Lord, and expressed his acknowledgements for the information he had now got on the subject.

His Grace described the riots in June last; said the interposition of the military had then become necessary; but contending at the same time, in very strong terms, that the military power had been carried too far in instances where there were no riots; and where there were, it was exercised too long. It was well known, he said, that the riots were solely

confined

confined to the metropolis, unless in respect of the trifling disturbance at Bath; notwithstanding which, the military superseded indiscriminately throughout the kingdom the interposition of the civil power, even as to the most proper and efficacious means in point of prevention. He censured, in pretty plain terms, the doctrine laid down by a great law authority in that House (Earl Mansfield), that soldiers in martial array might be called in in the character of citizens, to assist in suppressing riots; and said, whatever merit was due to those who applied the remedy to the evil while existing, he never could deem it constitutional to maintain, that soldiers under martial law, and totally at the command of their officers, could, in the proper sense of the word, be deemed citizens; and he would, had he had the honour of a seat in his Majesty's councils, never have consented, much less advised, the employing the military, in the manner, and to the extent in which they had been employed.

He begged leave to repeat, that, in his opinion, some means ought to be devised, to prevent the necessity of calling in the military; and he did not yet despair of seeing the time when such a necessity would no longer subsist:—At present he could only say, that he would accept of the learned Lord's proposition; that of postponing the second reading of the bill to that day three months.

The Lord Chancellor.

The *Lord Chancellor* then put the question, that said bill be read a second time on that day three months; which was agreed to.

Duke of Richmond.

The third reading of the militia bill being then moved for, the Duke of *Richmond* rose, and informed their Lordships, that he had, the preceding day, stated his principal objections to the bill before them; but as many of their Lordships had not been then present, he would beg leave just to repeat the substance of what he had said; but before he proceeded, it would not be improper, or unparliamentary, to call into his aid a general proposition, laid down by the noble and learned Lord on the woolsack, which would afford one additional argument in support of the clause he was about to offer by way of amendment to the bill before the House. The learned Lord's words, if he could recollect right, were nearly as follow: "When any old established law was proposed to be altered, it was a law or usage of Parliament, that the person moving a proposition, or presenting a bill for that purpose, should state the necessity, expediency, or policy of such an alteration." The bill before their Lordships

Lordſhips came within that deſcription; and if the reaſon aſſigned by the learned and noble Lord was a ſound one, it applied to both caſes, or to neither; but that was out of the queſtion; for the preſent bill propoſed the alteration of a law actually in being, and therefore demanded a ſtrict compliance with the rule.

His Grace then proceeded, and informed the Houſe, that he thought the bill, in its preſent form, would not have the effect which it was intended to produce. His Grace ſaid, that in the 18th and 19th of his preſent Majeſty, two bills had paſſed, which declared that the men then raiſed ſhould not be obliged to ſerve for more than three years, and that the then expiration of their time ſhould leave them entirely at liberty to return to their former occupations; or to continue as ſoldiers, if it was thought neceſſary to hold the militia ſtill embodied. The bill now before the Houſe directed, that the commanding officers of regiments ſhould apply to the reſpective men under their command, not three weeks, as the old law ſpecified, but even three months previous to the time of expiration, in order to know if they are willing to continue, and what ſum they expected as a bounty. And this application, his Grace ſaid, was to be made as well to ſuch whoſe time was near expiring, as to thoſe whoſe time of ſervitude was at a greater diſtance.

His Grace alſo ſaid, that the act laid down the ſpecific rules by which the commanding officers were to be guided; all which, his Grace contended, would tend to injure rather than promote the intention of the bill. The grounds on which his Grace oppoſed it were in ſubſtance as follows: He ſaid, that by altering the original mode of recruiting in the manner now propoſed, the men would be invited to combine not to ſerve under leſs than the very high ſum of 18l. which, from all he could learn, they would aſſuredly inſiſt upon. And when it was known publicly through the militia corps, that a bill which afforded them ſuch an opportunity had paſſed, they were ſo cunning and ſo knowing that they would either not ſerve, or oblige the man balloted for to find another ſubſtitute; which ſubſtitute would ſtill inſiſt upon the ſame high terms, whether he had been or had not been a ſoldier.

His Grace obſerved, that although the balloted man had it in option either to ſerve, to find a ſubſtitute, or to pay a fine of 10l. yet, however ſtrange the ſolecifm might appear, it would be more his intereſt to pay 18l. for a ſubſtitute than 10l. as a fine; and for this reaſon, if he paid for a ſubſtitute, the

pariſh

parifh was obliged to remit him half the money, provided that half did not exceed 5l. and he became exempted from again ferving, until every member of this parifh had been balloted, which was equal to an exemption for life. But if he paid the fine he was to be called upon again in three years, and then obliged to find another fubftitute, which would make him a lofer; becaufe, in the one cafe, he muft pay but 13l. for life, and in the other, 10l. every three years. His Grace obferved, that there was not in the prefent mode of recruiting the militia, any two regiments that adopted the fame fyftem. Some obliged the inhabitants to find fubftitutes; others took 10l. in lieu, and for that fum found fubftitutes; whilft fome had reduced the bounty-money, or price of fubftitutes, to a much leffer fum. Among the latter, was the regiment which he had the honour to command himfelf; the price of men in which was no more than 5l. each. It was, befides, not only the largeft battalion, but the moft complete in the kingdom, there being now in their fhoes the full complement of 800 men. This method of permitting the commanders to make the beft bargain they could, was, in his opinion, for he found it fo, the cheapeft for the fervice: while it reduced the price of fubftitutes, prevented combinations, and gave to that regiment which adopted the mode of accepting 10l. in lieu of a fubftitute, an opportunity of creating a ftock purfe; which fund was moft ufeful, becaufe they were paid out of it ten thoufand little incidental charges, that otherwife would become a tax on the nation, and of courfe muft be paid out of the extraordinaries. His Grace underftood that there had been fome time fince a meeting of the militia Colonels at the St. Alban's tavern, where it was allowed, that the beft modes of completing or recuiting the militia was that which he took the liberty to fuggeft; and that the mode now propofed, of fpecifically laying down particular rules, by which each commanding officer was to be governed, would impede the fervice, and raife the price of fubftitutes; it would operate as a notice to the men to enter into a combination, and fix the price of their carrying arms.

The great number of laws already in being refpecting the militia, he obferved, would fill many volumes in folio, were they put together: notwithftanding which, another law was now propofed to their Lordfhips confideration, which would fwell the code, and add to the difficulty and embarraffment. He profeffed to have nothing more in view than the good of the fervice, which could never be more effectually promoted than

than by leaving men at their liberty to act for themselves; because by that means they would have the satisfaction of thinking that they had not been trepanned, but had acted entirely upon their own judgement.

As to the apprehension suggested of the regiments being incomplete, in a moment, when an actual attack may be made, in his opinion it would, if such an apprehension existed, be found to be merely ideal. There was a spirit in this country, which in such a crisis, would effect more than any prospect of reward. If in such a moment of public alarm and public distress, men were wanting to complete the militia corps, which was hardly probable, they would be collected, not by the prospect or expectation of pecuniary reward, but by one of the most powerful motives by which an Englishman could be actuated; a love of his country, a personal pride, and a firm attachment to the constitution, under which he was born, and by which he had been protected. This was not merely an opinion founded in speculation, a recent instance had fully confirmed what he had now asserted. When Plymouth was menaced by the enemy, the last year but one, there were an hundred of the Devonshire militia whose time of servitude was expired, and of course they were at liberty to return to their own homes but what was their conduct in the moment of danger? instead of returning to their wives, families, or relations, they attached themselves to the corps to which they belonged, nor ever quitted it as long as their services were deemed necessary, nor till the enemy were acknowledged to have for some days returned into port. This would always be the case when the men were well treated by their officers, and proper care taken to convince them that no hardship was imposed, but such as was absolutely necessary, or arose from the nature of the service, and ultimately tended of course to the general defence of the kingdom.

His Grace then read a clause, which he meant, he said, to submit to their Lordships, he would not offer it till he knew what the sense of the House would probably be, or rather that of administration, well knowing what little chance of succeeding there would be if administration thought fit to set their face against it; — the proposition he meant to move, by way of clause, was, that it might be made optional,

and not obligatory in the men, to declare whether they would engage again at the expiration of the term for which they engaged.

Lord Stormont.

Lord *Stormont* said, he had considered maturely the objection which the noble Duke yesterday made, and had consulted others, who, from their great military knowledge must be competent judges, but he could not, for his own part, nor could those to whom he had applied, find out that mischief which his Grace had stated to be the probable consequence of passing the bill. In his apprehension the noble Duke had taken up his opposition on what it was difficult to understand. The bill in question, was merely to this effect: it required the men to be balloted for six months before they were wanted, and the noble Lord, and his friends thought it requisite because it was impolitic as well as dangerous "to let the expiration of the present troops, serving, run out before the nation was secure of substitutes to succeed them;" for in such a case, the kingdom might be left in a defenceless state. His Lordship said, that the present bill did not prevent commanding officers from making what bargain they pleased; nor did it in any respect alter any of those former modes that were conducive to recruiting the militia; it only provided against possible danger, and in that case ought to meet the concurrence of the House. His Lordship farther said, that he endeavoured to collect the noble Duke's meaning in his objections of yesterday, and wished to coincide with them if they were proper; but that on the closest investigation, there could not be any reason found for acceding to his Grace's proposed clause.

Duke of Richmond.

The Duke of *Richmond* replied, that the optional clause, which he would have introduced, would answer every purpose desired; that it would be an imposition upon those who had served, or had been balloted in; that it would increase the price of substitutes double, if not treble, and hurt the recruiting service; that, for his part, the price paid to substitutes in the regiment he commanded, was no more than five guineas; and at the instant he was speaking he did not want a single man; yet he was doubtful that the present bill would soon affect the recruiting service in such a manner that he should not be surprised as soon as it was passed, if twelve or fourteen pounds were demanded.

The question was then put on the third reading, and agreed to without a division.

March

March 28.

This day a motion was made by Lord *Mansfield*, that the petitions of the several parties, claiming the office of Lord Great Chamberlain of England, be heard at the bar of that House by counsel, on Wednesday the 2d of May.

The report on the Ilmington enclosing bill being received from the committee, the Lord Chancellor gave notice, that he would on Friday, move to have the same re-committed, and would of course give orders that their Lordships be summoned for that day,

March 29.

This day his Majesty came to the House, and gave the royal assent to the custom, discount, and five per cent. excise bills, and a few other public and private bills.

March 30.

Bishop of St. David's.

As soon as the order of the day, for receiving the report of the Ilmington inclosure bill was read, the Bishop of *St. David's* [Doctor Warren] rose, and made a short prefatory discourse, in which he acquainted the House; that as the mode of commuting tythes for lands in bills of inclosure had long appeared to him to be very improper on many accounts, and as this mode was adopted in this bill now under consideration, he had proposed in the committee above stairs, on Wednesday last, to amend the bill, by leaving out all the clauses in which land is given to the Rector, by way of compensation for his tythes; but the amendment not being agreed to, his design now was to make a motion for re-committing the bill, and had for this purpose desired to have the House summoned.

After this preface, he observed, that the rights of the church in general, and of the parochial clergy in particular, were involved in this question; and he had therefore, he was sure, no occasion for making any apology for the trouble he was going to give the House. He stated that tythes were the constitutional maintenance of ecclesiastical persons in this country; that the law for compelling the payment of them was at least of a thousand years standing. That the doctrine in Westminster-hall, and all our law books, was, that all lands are tythable *jure communi*; and in compliance with this notion, and agreeably to this maxim of law, when inclosures were first made, incumbents were always permitted

 to

to take the tythes of the lands inclosed, in the same manner as when open; adding, that it had been the uninterrupted custom till lately to have inclosed lands subject to the payment of tythes in kind: he believed the innovation was not of more than thirty years standing.

The first reason was, that this practice tended to bring land into mortmain; which was one reason among many why our ancestors thought tythes the best and properest maintenance of ecclesiastical persons.

Secondly, commuting tythes for lands was improper, as tending to render our clergy more secular, the income arising therefrom being easily managed. The incumbents neither plough, sow, nor reap, but when employed in country business, from one end of the year to the other; and thus immersed in worldly affairs, it will take them off from the faithful discharge of the duties of their sacred functions; and though they might free themselves from this trouble by letting their lands, yet, considering the scanty incomes of many of the parochial clergy, they would be induced to occupy these allotments themselves, with a view to make a better provision for their families.

Thirdly, a compensation in land would open a door to fraud. Parishes of any considerable extent he said, consisted partly of old inclosures, and partly of common fields; and when these last were inclosed, and made exempt from the payment of tythes, it was usual for the occupiers to threaten the incumbents to plough up the new inclosures only, which are now become tythe free, and to keep the new inclosures in grass, they being subject to tythe, unless the incumbents will consent to let the occupiers have their corn tythes in the old inclosures at a very low price. This was a very obvious piece of craft, and was practised every day to the great detriment of the parochial clergy.

He next objected to this practice of giving lands in lieu of tythes, because it often tempted the incumbent to collude with the patron.

Patrons are frequently lords of the manor, and, as such, are commonly the principal proprietors of the land. This being the case, the patron forms a design of inclosing the parish, and communicates it to the incumbent, who readily consents, and only asks, that care may be taken that the allotment to be made in lieu of his tythes may be equal in value to them. The patron promises to take care of this, and to free the incumbent from all apprehensions, engages to farm the

the allotment of him at as high a rent as he ever made of the tythes in the best times. The inclosure takes place, and the patron hires the allotment of the incumbent on the fair terms he proposed. In a few years the incumbent dies, or is removed; a new incumbent succeeds, who proposes to let the allotment at the same price his predecessor had done, but finds that he cannot get so much by half, and finds also that it is really worth no more. As the facility of practising this sort of collusion flowed from a bare consideration of the case, it was remarked that there was no occasion to produce any instance, since the possibility was sufficient in point of argument; but if it were necessary, his Lordship added, that he had an instance now in his mind, which, if it were required, he would mention.

A fifth reason might be drawn from a consideration of the difficulty of cultivating the allotted lands in such a manner as to make them of real benefit to the incumbents.

It had been usual to insert in the inclosure bills, a clause for enabling the incumbent, with the consent of his diocesan, to let the allotment for twenty-one years. This latitude was given, that the person who might rent it should have sufficient encouragement to treat the land in a good husband-like manner. The incumbent would be glad to occupy it himself, in order to add a little to his present income; but as it would perhaps require seven or eight hundred pounds to stock a farm of this kind properly, it would be totally impracticable, very few of the parochial clergy being able to advance half that sum; consequently when the terms are expired, the incumbent under such circumstances will be under the necessity of letting his compensation in land much below its true value. It sometimes happened, that when even his allotment was fenced in, that nobody would offer himself as tenant; an instance of the kind having come to his knowledge in the diocese of Lincoln; which as it produces nothing, had caused the performance of divine service to be discontinued; adding, that if so many inconveniencies were found in this mode, though in its infancy, instances of the kind would continue to multiply, when the barns erected on these allotments became ruinous, and the fences out of repair. Whereas if the old mode of taking the tythes in kind, or commuting them for money had been continued, not one of these inconveniencies could have happened.

His Lordship proceeded to answer such objections as he thought would be made to his proposal; and under this head went through all the cases of inclosure. First, he considered

parishes

parishes consisting of open field lands only; next, parishes consisting of old inclosures and open fields; and lastly, parishes consisting of old inclosures, commons, and waste grounds; and endeavoured to shew, that in all these cases the incumbent, whether rector or vicar, would reap more advantage from having the tythes than an allotment in land, except in parishes consisting of open fields only, and as there were very few parishes of that description, no great inconvenience would arise, if land or a corn rent were given by way of compensation for the tythes in those cases.

Tythes had been considered by many as a very improper maintenance for the clergy, because they were apt to produce disputes, and breed much ill will between a pastor and his flock; and an allotment therefore in land was much to be wished. He confessed that this argument had weight as well within as without doors, but still he contended, that it was a very fallacious one. He remarked, that the incumbent always asked a reasonable price for his tythes, because he always asked less than an impropriator did, in all cases under the same circumstances; and if it sometimes happened that a suit was instituted by the incumbent for the recovery of his dues, it generally proved in the end, that the occupiers were to blame, since out of seven hundred tythe causes which have been tried in Westminster-Hall, six hundred and sixty were determined in favour of the incumbents; and therefore it appears to be particularly hard that a remedy which is so detrimental to the real interests and rights of the parochial clergy should be made use of, on a pretence of establishing peace, when the fact is, that the peace and quiet of a parish has hardly, in any one instance, been interrupted by the incumbents themselves.

That tythes, in the hands of a discreet and judicious clergyman, instead of breeding quarrels, he was persuaded, might, and often had, proved the firmest bond of union and friendship between the pastor and his flock. Such a man would always confine his demands within the bounds of moderation, would shew his parishioners how kindly he treated them, by comparing his demands with those which their neighbours were proud to submit to, who happen to live in a parish where the tythes are in the hands of an impropriator; and by means of these communications, and a little yielding on each side, it is easy to conceive what mutual esteem and regard may be thus raised between the incumbent and his parishioners. But when the tythes are taken away, this cement-

çement is broken; these opportunities of communication are at an end; and as the parishioners are independent of their minister, so the minister is independent of them. They will certainly soon forget the relation they stand in to him, and he will perhaps too soon forget the relation he stands in to them; and instead of being an adviser or counsellor, and a friend, he will sink into the common mass of farmers, and be as little respected and regarded as the meanest among them.

He begged leave to remind their Lordships, that about sixty years ago, a bill, known now by the name of a Tythe Bill, passed the House of Commons; the object of this bill was to make all lands tythe free, for which no tythes had been paid for the last forty years, and to give all money payments in lieu of tythes the force of a modus, in case the payment had been invariably the same for forty years. The only argument made use of in the House of Commons was, that this bill would effectually establish peace and harmony in every parish. When this bill was brought up to the Lords, they would not impose on others, nor be imposed on themselves, by a fallacious argument drawn from peace, but shewed themselves the true guardians and protectors of the rights of the church, by rejecting the bill with the utmost indignation.

He would trouble their Lordships no farther at this time, against the principle of the bill, as far as it related to the commuting of tythes for lands, thougn he made no doubt of being able to prove how exceptionable the bill was on other accounts; but as he expected this matter would be fully taken up by other Lords, and undergo a full and impartial investigationin the course of this debate, he should offer nothing on that head; he nevertheless thought proper to observe, before he sat down, that if the bill were really and truly unexceptionable in all respects, yet if the principle he had been combating was wrong and improper, the amendment proposed by him in the committee on Wednesday last ought to have been received; the persons concerned in this bill, it was true, might say that they had rather have no bill than a bill thus amended; this, in his apprehension, would amount to a declaration that it would not be worth their while to inclose, unless they were permitted to make some encroachments upon the property of others, in order to add to their own.

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The right reverend prelate concluded a ſpeech of conſiderable length with expreſſing his thanks to the Houſe for their great indulgence, aſſuring their Lordſhips that nothing but the zeal for the ancient and conſtitutional rights of the church in general, and of the truly reſpectable and uſeful order of men, the parochial clergy in particular, could have prevailed on him to have treſpaſſed on their patience in the manner and to the extent he had done.

The Bp. of *Peterborough*

The biſhop of *Peterborough* (Dr. Hinchcliff) roſe in reply. He profeſſed a willingneſs to meet his learned friend on the principle of the bill. He ſaid, for his part, he took its probable operation to be directed a way very different from that which had been chalked out by the learned prelate. He could never diſcover from what had fallen within his obſervation, but there were many other inſtances to which the principle of the preſent bill might, in the nature of things, poſſibly extend where clergymen were land-holders and occupiers in their clerical character; ſeveral of them had glebe land, which they either cultivated themſelves or let out to others. In the preſent caſe there was no compulſion upon a clergyman more than any other; that becauſe he poſſeſſed a landed eſtate for life, that therefore he was obliged to keep it in his own hands to occupy or cultivate it.

In his opinion it was optional, and he was no more obliged to cultivate his lands, to raiſe the produce of them, and ſell it, than any other perſon who now heard him. On the contrary, if he took his tythe in kind, he was obliged, as the learned prelate obſerved, to collect it at no ſmall trouble, and often attended with great vexation; and as he could not conſume any conſiderable part of it, he neceſſarily ſent the reſt to market, or ſold it at his own houſe. Here he acted in the capacity of a farmer, as to the ſale; and conſidering all circumſtances, he doubted much whether the toil, labour, and anxiety, was much leſs in one way than the other. By having a compenſation in land, he avoided many inconveniences, and one in particular which materially affected his eccleſiaſtical character, nay tended to defeat the ſole object of the inſtitution of eccleſiaſtical perſons.

It was often of very little conſequence, that a clergyman was a good man; that he was benevolent, kind, meek, and generous; that he poſſeſſed every chriſtian and moral virtue; that he laboured inceſſantly, as well by precept as example, in the care and inſtruction of his flock. If he preached like an

an angel, he would often, indeed almost always, preach in vain, while those to whom he addressed himself had conceived prejudices and resentments against him; and for what? because only he was a partaker of their property and labours. He presumed he need not press this point upon his learned brethren; they knew it. It was notorious, and familiarised by common observation and experience. The interest of the incumbent was deemed incompatible with the interest of his parishioners; and the merit of the ecclesiastic was viewed through a wrong and partial medium, when his fair, legal, established claims, came to be balanced against the interest of his parishioners. The pastor was in short totally sunk in the tythe collector; and not what he recommended, but what he sought or demanded was the object which generally was kept up to to the eye of those called upon to discharge it.

Another material circumstance he begged leave to mention to their Lordships was this: that by the superstitions and acts of the regular clergy in the times of popish ignorance, the secular clergy were robbed or defrauded of their rights. He thought fit to mention this on two accounts: first, to remind their Lordships that the injury done to the secular clergy in those times was afterwards confirmed by Henry VIII. He put an end to the existence of the regular clergy, but perpetuated the injustice; for, instead of rendering to the church what had been unjustly taken by monkish fraud, he created lay impropriations, the possessors of whom retain the property originally intended for the maintenance of the secular or parochial clergy.

This produced a kind of mixed property, which was now distinguished by the appellations of rectorial and vicarial; that is to say, the lay impropriator, who stood in the shoes of the regular popish clergy, frequently held the great tythes; while the vicar, to whom was committed the care of souls, received only the small ones.

The bill now before the House, and every other bill of a similar nature would, in some measure, remedy that defect; it would make a certain provision for the vicar, whereas if the vicar had, suppose for instance, the tythe of corn, the corn-land might be thrown into grass, to which he could have no claim; or *vice versa*, grass-land might be broke up, and thrown into corn, to the exclusive benefit of the lay impropriator, and to the injury, or, in some instances, even ruin of the vicar,

This was, in its present shape, a most grievous evil, and along with all the other mortifications the vicar suffered, left him at the mercy of his parishioners; for in many cases he was persuaded, if the parish thought fit to confederate against their pastor, they might easily deprive him of the means of subsistence according to local and other circumstances.

On the contrary, by setting out his portion in land, his income would be better secured; he might let or occupy as he thought fit or convenient; and his having no call or demand on his parishioners, would render him independant; he meant, give him that sort of independence which would enable him to discharge his duty, because he would there stand in relation to his parishioners as a man of property, in the same light with every other man, upon his moral character and means of livelihood. He would possess, besides the advantages arising from his clerical character, which would smooth the way to that species of influence or authority every pastor, to be successful, should have over his flock; because every object of worldly contention or personal interest, being removed, whatever he said would be attended to with that degree of deference and respect, which was due to a person who had no other motive to admonish, to persuade, or reprehend, but what was ultimately directed to the spiritual benefit of those who were committed to his care.

The Earl of Westmoreland.

The Earl of *Westmoreland* perfectly coincided in sentiment, he said, with the learned prelate who spoke last. He was satisfied of the justice, and was convinced still more of the expediency and sound policy of passing inclosure-bills in general, and of setting out to the parson a certain portion of land in lieu of tythes. Land would always bear a certain and proportionate value; and was not like money which was constantly undergoing changes in respect of its relative worth; such a mode of commutation would likewise be productive of many other consequences of a very beneficial and desirable nature, so far as it would operate towards promoting a good understanding between the clegyman and his parishioners, which would give additional weight to his doctrines, and create a proper respect for his person and example.

Taking tythe in kind, or commutations in money, he considered as a source of perpetual strife and ill-will, and as the cause of inveterate and incurable disagreements between the pastor and his parishioners. It was hardly to be expected that the flock could be much edified by the instructions of

a man

a man whom they considered as their daily oppressor, and sharing with them the fruits of their laborious industry; nor on the other hand could it be expected that the pastor would be so sanguine in conveying his spiritual benefits to those who were constantly devising new means to harrass, tease, and perplex him. It was not to be expected, nor could human belief be so far stretched as to presume that men would be converted to good ways, nor the preacher listened to with reverence and respect, when he was the perpetual object of their personal enmity, and the supposed author of the heaviest grievances they had to complain of.

In other respects taking tythe in kind, or commuting it for money, where the farmer was obliged to pay nearly the full value, was a great discouragement to agriculture and every species of improvement. It must be very obvious to every noble lord who heard him, that the land-owner and land-holder were frequently deterred from improving their farms or 'states, merely on account that it would create or lay the foundation of a tax upon their own property; for instance, suppose a man laid out a considerable sum of money to improve a freehold or leasehold estate; in that case he would, besides having the interest of the money laid out to charge on the improvement, have an additional tax laid by the rector or vicar; which, as he observed before, must continue to operate as a discouragement to the reclaiming of barren lands, and an higher cultivation of grounds more capable of improvement. But when this odious and unpopular tax was, instead of being arbitrary, at the will of every new incumbent, and as it frequently happened, was annually exercised according to the caprice, litigious disposition, or avarice of the same incumbent; when the sum was fixed, and tax certain, not contingent, the land-holder or farmer then proceeded with zeal and alacrity, under the idea of perfect security, that he was working, toiling, and advancing his money for himself and not for another. He did not rest his argument upon theory or hypothetical reasoning, he would appeal to every noble lord present, if this was not the case in a greater or less degree in his own neighbourhood, and where inclosures had taken place, whether the face of the country was not totally changed for the better, and whether of course more grain in the corn inclosures; and more grass, where the rearing and feeding of cattle and sheep were preferred, was not the consequence? There were other reasons equally cogent which might be urged, both for the inclosing of

of land and the apportioning a certain part of the land so inclosed to clergymen; he should content himself with briefly hinting at one, and it was this; that the man who had a certain number of acres which he could call his own in the first instance, and free from tythe in the second, would prize it more than double the quantity in common, and subject to pay tythe, and that on a very simple and obvious account, because the labour, industry, and money laid out upon it, would be all his own as well as the soil, and he would thereby have an opportunity of adding to the value of his estate, which would be impossible so long as the soil continued to be unascertained, and remained liable to be taxed by the rector or vicar in a sum, in many instances, equal to the annual value of the soil.

Earl of Coventry.

The Earl of *Coventry* on the same side, went over partly the same ground, and expressed, in very warm terms, his perfect approbation of commutations in preference to tythes, particularly commutations in land; and experience in this, as well as in all wordly transactions he said, was the best guide; considering it merely in that light, he therefore believed it would be found almost universally true, that in those parishes where commutations had taken place, they were productive of peace, good will, and good neighbourhood; that the pastor was happier, more respected, and in fact easier in his circumstances, while his parishioners remained no less contented than amicably disposed towards him.

The learned prelate, who opened the debate, seemed to lay great stress upon one circumstance, which was, that by making the parson a land-owner, it would draw his attention to the cultivation of his land, and of course occasion him to neglect the sacred functions of his ministry. He believed when the tythe was taken in kind, it rather made against the conclusion drawn by the learned prelate than for it; but even supposing that not to be the case, he could easily conceive, that his attending to his worldly affairs for six days of the week, might be well dispensed with, if he dedicated the seventh to discharge the functions of his ministry, which day was set apart by God himself for that purpose. The clergy, taken in the aggregate, were besides a very numerous body, and notwithstanding the very high reverence and respect he entertained for them, he did not know, when not actually employed in their proper vocation, how they could pass their time better than in rendering themselves useful members of society, and attending to those concerns which every man of every description was bound

bound to perform: in short, though the parson might act as a farmer for six days in the week, and thereby render himself a useful member of the community and serviceable to his family, he would not by that be prevented from instructing his parishioners in religion and morality on the seventh. He would indeed, in his opinion, by such a meritorious conduct unite example and precept, and of course convey to his flock practical as well as theoretical instruction.

Lord Chancellor.

The *Lord Chancellor* being in his place observed, that when a point of such great and entensive importance came before their Lordships, it was fitting their Lordships dignity to treat it in a stile of gravity suited to a subject, the decision of which might effect great numbers of the most respectable members of the state in one point of view, no less than the whole body of the clergy of England, the whole of the landed interest, no inconsiderable discription of men, and all those who rented lands, and who obtained a livelihood by agriculture or grasing. There might be occasions in which levity might be excusable, though he confessed, for his part, he should ever wish to see it avoided within those walls as much as possible; but at present, whether it arose from a stile of thinking and acting peculiar to himself, he could not avoid remarking, it appeared to him, that jesting on the present occasion was ill timed, and laughing indecent.*

The question to discuss, to which their Lordships were called by summons, was such as called for much serious considera-tion; he was extremely pleased therefore to perceive so full an attendance, for he thought it not solely impertinent to declare, that in all cases, in which he had the misfortune to differ from the noble Lords when the House was indifferently attended, he felt much on two accounts; first that his opinion might have undue weight and bias that of others, and in such an event, that his errors should, for the want of more able assistance and a full House, pass as the mature decided sense of their Lordships.

This was a species of internal responsibility, which he would never wish to be loaded with, and was, he protested, the occasion of creating much uneasiness in his mind; and it was no small consolation to him in the midst of attendances, which

* This part of his Lordship's speech was by way of animadversion on the effect of what fell from the noble Lord who spoke before him, who had approved of the clergy being employed in their wordly affairs six days of the week, and the seventh in discharging their spiritual duties; which caused a loud laugh.

which had proved for weeks past so remarkably thin, that so many noble Lords had though the bill worthy of their notice; his satisfaction was still the more encreased in hearing the subject so fully, and in his apprehension so ably discussed by the learned Prelate who opened the debate. The arguments urged by the reverend Prelate, seemed to have been the result of laborious research, and deep and sober investigation; which, as long as Christianity continued to be the established religion of this country, must at all times, and on every proper or necessary occasion, challenge in a peculiar manner the attention of the legislature, particularly of that House.

Taking the matter up in that point of view, as involving in it the interests of so respectable a set of men as the clergy of this kingdom, the greatest guardians of the religion of the state, and the morals of the people committed to their care: it becomes an object of singular importance; but without having any intention to travel out of the question, in order to pay a compliment to persons habited in lawn sleeves or in any other dress than the rest of mankind, the question with him would be, what are the rights of the clergy, as derived by the constitution and confirmed by law; That, and that only, was the sole object, as he apprehended, fit or worthy of their Lordships consideration. This should be undertaken free from all partiality or prejudices, private views or local interests. In this temper he was determined to take up the question, and if he should mistake the real object, he trusted those who heard him would impute it to its real cause, that of incapacity, and not from a design to mislead.

His Lordship begged, before he proceeded to debate the question, to add a single word, which would remind their Lordships of the difference of opposing a measure openly, and endeavouring to defeat it by underhand means and managements, acting behind a mask from motives of hypocrisy, and others of the most disingenuous kind, [supposed to mean a certain noble Earl, who afterwards spoke in the debate;] for his own part, he should not act in that manner, but was determined to meet the question fairly and take the sense of the House upon it.

The learned Prelate was fully justified in saying, that the right of the clergy were coeval with the constitution, and had since the first establishment of Christianity in this kingdom, a period of upwards of one thousand years, been vested in the manner in which they were claimed and enjoyed at present;

present; and though the Lateran council, held in the eleventh century, ascertained the rights of the clergy in a more precise and specific manner, with the consent and approbation of all the sovereign princes of Christendom, yet the final settlement then made and ratified by all the parties concerned, was rather a recognition of rights already exercised and enjoyed, than creating new ones which had not been before submitted to and aknowledged.

Thenceforward the property of ecclesiastics, and ecclesiastical bodies and corporations, stood upon as strong foundations as those which supported or secured to the possessors of any other species of property whatever, and so it continued without interruption till the time of the reformation. At the dissolution of the monasteries, it was true, as had been hinted early in the debate, a great part of the patrimony of the church went into the hands of lay impropriators, and soon after, so early as the beginning of the reign of queen Elizabeth, the lay patrons and others interested in the event, wished to put matters still farther, and as it were to strip the church of almost every thing she possessed, by pretended compositions, modusses, not supported by prescriptions; and collusive bargains and agreements between the imcumbent for the time being, and every person who might have it in his power to force or delude the person in possession, to defeat or injure the interest of his successor; those frauds at last became so destructive and numerous, that the legislature was obliged to interpose, and by laws enacted for the purpose to prevent all fraudulent or collusive bargains made by the person in possession, to the detriment or injury of his eventual successor; in which, among other things, the bishops or chapters were prevented from making longer leases than for twenty-one years, and the rectors and vicars longer than for seven, so as to bind those who were to come after them. The rent or equivalent reserved was not to be less than that paid by his predecessor, nor was any modus hereafter to be considered as such which could not be proved to have existed at the time of the passing of the act, and previous to that act which could not be traced up to what in law was understood by legal memory. The universities for the same reasons were restricted from making any commutation or receiving any compensation but in corn, which was to bear a proportion to the current value; that is, wheat was estimated at a certain price, (we believe six shillings and eight pence a quarter) and so many quarters were to constitute the reserved rent,

rent, and whatever the corn came to at the future current price at the next market town, the univerfity were to be paid to the amount in money. Hence the rights and property of the church, and of ecclafiaftical and other learned bodies, if they were not reftored, whatever part of them remained, were in a great meafure fecured againft future fraudulent alienations, and proved a ftrong proof of the wifdom and found policy of the framers of thofe laws; exhibited beyond a poffibility of doubt, that the evils they were intended to correct exifted and pointed out the neceffity of keeping a cautious and jealous eye upon all thofe, who under the pretext, would endeavour to alter the tenure, by which the ecclefiaftical polity was maintained. Innovations attempted upon ancient eftablifhments, furnifhed at all times good ground of alarm, and if no other argument could be adduced in support of it, the conduct and caution of our anceftors held out an example worthy of modern imitation.

His Lordfhip after having given a moft able account of the firft formation of the ecclefiaftical polity of this country, and of the various changes it underwent, as to the different modes adopted, but in which he contended the principle in a fingle inftance had never been departed from; next turned his attention to the mode in which private bills were permitted to make their way through both Houfes, and that in matters in which property was concerned, to the great injury of many, if not the total ruin of fome private families; many proofs of this evil had come to his knowledge as a member of the other Houfe, not a few in his profeffional character, before he had the honour of a feat in that Houfe, nor had he been a total ftranger to fuch evils fince he was called upon to prefide in another place. He did not recollect the twentieth part of them, but he could not forbear ftating a few, which had recently challenged his recollection. Through the latter channel he had learned, that there was a family of the name of Gardiner, in Wales, which had been ftripped of its whole property by the compendious and certain operation of a private bill. This furely muft have proceeded from the moft criminal inattention, for he could not attribute it to a criminal intention, to ruin the unfortunate and diftreffed; indeed, he believed, he might point out with certainty to one fource of the evil, he meant the facility, or rather rapidity with which private bills were hurried through the committees of the other Houfe, where it was not infrequent to decide upon the merits of a bill, which would affect the property

perty and interests of persons inhabiting a district of several miles in extent, in less time than it took him to determine upon the propriety of issuing an order for a few pounds, by which no man's property could be injured. He begged leave while he was on this part of his subject, to state a particular fact which was reported to him upon an authority which no person who heard him would, he believed, question, after he mentioned the voucher's name; a man, he would be bold to say, one of the most upright and honest members in either House of Parliament, whether those epithets were applied to him in his public or private character; after he said, he presumed, as the matter arose in a committee of the other House, it would be unnecessary to add, that the gentleman he alluded to was Sir George Savile; the circumstance was this: in a committee on a private bill, a man habited rather meanly attended the committee, and seemed to be more anxious and interested in the business going on than what generally happens in the case of a by-stander, whom mere curiosity might have drawn thither. The bill took up some time before the members agreed to a report, yet the stranger was not absent scarcely an instant; at length when the committee had finished, the stranger betrayed visible emotions and an apparent distress of mind. The worthy Baronet interrogated the man upon the cause of his seeming embarrassment, who informed him, that a particular clause in the bill which had just passed the committee, would involve him and his family to a certain ruin; that when he heard such a bill had been introduced into the House, he was aware of what he had been just then a witness to; that having no means of conveyance, he was necessitated to walk up to London on foot, and not having money was not able to fee counsel to defend his rights. The worthy Baronet made farther inquiries, and finding the poor man's story to be well founded, removed all the impediments that stood in his way, by which means an innocent, indigent man and his family were rescued from destruction.

His Lordship adduced one or two other instances of a similar tendency, and proceeded to make several observations on the bill now before their Lordships, and which the learned Prelate moved to re-commit: he first examined the preamble, which described the property intended to be divided, containing in the whole fifty-two yards lands; containing likewise a recital of the names of the parties, namely, the lord of the manor, the patron of the living, and the incumbent or rector. The bill then states the names of five

persons, who have a right to the common fields in commonable land, to be inclosed, which fields are to be divided among the said proprietors.

He observed that in the said recital, it was taken for granted, that the patron and incumbent were entitled to certain glebe-lands; to tythes great and small, or moduses. His Lordship then proceeded to examine paragraph by paragraph, every provision of the bill, animadverting and pointing out some acts of injustice, partiality, obscurity, or cause of confusion in each. But as the particular bill itself was not the object of debate, but the principle of commutation and giving a portion of land in lieu of tythes; we shall pass over that part of his Lordship's speech, as being totally irrelative to the debate on the principle of the bill.

His Lordship having finished his animadversions on the clauses, proceeded next to answer some of the arguments resorted to by those noble Lords who spoke in reply to the learned Prelate that moved the recommitment. In answer to the learned Prelate who spoke second [Peterborough] respecting the advice given by him to the clergy of his diocese, to conciliate as much as possible the good will of their parishoners, by commuting their tythes at a reasonable value; he was ready to approve of the conciliatory advice, though he must be of opinion, that the surrender of a man's property was rather a novel mode of obtaining peace and good neighbourhood; he doubted much, however, if a permanent peace would be obtained, so long as the peace-maker had any thing to give away, or those who were only to be reconciled in this manner had any thing to ask. But allowing this advice to have been sound and wholesome, and to be upheld by facts, confirmed by experience within the diocese over which the learned Prelate so happily presided, it might not be the exact case in other dioceses; nay, not even within his own, unless he could undertake to say, that he gave the advice generally to all the clergy under his pastoral charge, and that it was universally followed and approved of by the clergy. as well as their respective parishioners: otherwise, unless the learned Prelate meant to lay it down in the broad manner he had described, his advice, or the opinion on which his advice was founded, meant no more than an individual opinion of what was proper to be adopted, but what might not be adopted; on the contrary, it might be possible, that great numbers of the clergy within his diocese, had cultivated peace and good neighbour-

neighbourhood within their respective parishes, though they still continued to take their tythes in kind, in preference to commutations in land or money.

He dwelt much on the absurdity of supposing that peace and good neighbourhood, reverence and respect, could be ensured or obtained in no other manner but by a surrender of a man's property, as if men were only to be bribed into a discharge of their religious and moral duties, by means so extraordinary and unprecedented in every other walk of life.

His Lordship having spoke for a full hour and three quarters, said, he did not doubt, be the fate of the bill what it might hereafter, that their Lordships would agree to the recommitment proposed by the learned Prelate. He thought it his duty to take notice how very anxious those were, who opposed the re-commitment, to found all their arguments upon the general principle of inclosure bills of modern date, the giving a compensation in land in lieu of tythes; whereas the principle here was totally out of the question: the question before the House was, not whether their Lordships should re-commit, in order to restore the tythes to the patron or incumbent, but whether the House approving of that principle, would pass a bill totally faulty in every other respect; and it was on this ground alone, that he trusted their Lordships would send back the bill to a committee, to prevent the injustice, to correct the errors, and to reconcile the inconsistencies which it must remain fraught with, if passed in its present form. He said, if he should be defeated, he should not be at all dissatisfied; all he wanted to be informed of, was, the reason of his defeat. He had no interest one way or the other: he was under no predilection which could mislead him, or direct him to an improper object: nothing more, he solemnly protested, than an anxious desire to discharge his duty. If he was beat by fair argument, he should chearfully submit; and if he should hear any thing urged in the shape of argument sufficient to combat his opinions, he would acknowledge his error; if not, he should endeavour to answer them to the best of his abilities.

Lord Dudley.

Lord *Dudley* said, he rose to vindicate the committee upstairs, whose conduct seemed to be in some measure censured, as having, like other committees in other places, acted hastily and precipitately. He did not presume that the learned and noble Lord meant to direct a particular charge against that committee; but if committees in general upon private bills,

acted without due information and inquiry, and if the present bill was so very exceptionable as the learned Lord had described it, it was not stretching the inference too far to say, that the committee were so far blameable, as not to correct the errors after they were pointed out to them. He believed, however, that the very contrary was the fact, for he was a witness to the great care and circumspection taken in respect of private bills, which he assured their Lordships, as a member of that committee, was not at all relaxed: consequently, there was not the least colour for any imputation direct or implied, of neglect, hurry, or innattention; the committee having waited and patiently heard every tittle of evidence offered to their consideration.

Had the learned Lord, for whose abilities he entertained the highest respect, thought fit to suggest any objection in the committee, he said no doubt but whatever his Lordship might have offered, would be received with all due attention; but as his Lordship had neglected what was much more proper to be urged in the committee than on the report, he confessed, great as the noble Lord's authority was, he had heard as yet nothing sufficient to induce him to change his opinion, nor was he convinced by any argument which fell from the noble and learned Lord, that the bill was founded in absurdity, injustice, contradiction, or confusion.

The clause offered by the learned Prelate who opened the debate was rejected, and the learned Prelate wished to have the bill re-committed, in order to give him an opportunity of again moving the clause; yet almost every noble Lord present, agreed with him that the clause was totally unnecessary; notwithstanding which, it is the only ostensible reason urged by the learned Prelare for sending the bill a second time to the committee.

On the whole, when the advantages and disadvantages of inclosure bills were candidly considered, impartially weighed, and opposed to each other, he could not help confessing his astonishment, that any noble Lord who was interested in bills of the kind, or was a witness to the great benefits derivable from individual cultivation, and a specification of property, could hesitate an instant in perceiving on which side the scale had clearly and decidedly preponderated.

Earl of Sandwich.

The Earl of *Sandwich* made a very pointed discourse, part of which seemed to be directed to the woolsack: He said he could never approve, as long as he had the honour of a seat in that House, of motions which might, in their aspect and tendency,

tendency, embroil and destroy the peace and quiet of the country. He said, a very considerable part of the landed property of the kingdom was held under acts of inclosure. A great part of his own estate was of that tenure. It had been an open country, and was in a very rapid state of progressive cultivation and improvement. There were a great many instances which came within his own knowledge, of the evils which arose from the clergy being obliged to take tythes, and he was persuaded, that they would never be so effectually removed as by a general commutation by land or money. He would ever support the just rights of the clergy; for in supporting them, he should maintain the cause of religion and virteu. Their rights and property were as sacred and inalienable as any one of their Lordships. They were derived from the constitution, and must be maintained or fall with it, and he was ready to risk his fortune and his life in their support!

Among numerous instances of the hardships and injuries the clergy daily suffered, he would mention a singular one which came within his own knowledge. It was in the parish of Turringdon, in the Isle of Ely: this parish was insulated and surrounded by high ditches and deep dykes. The living, if the tythe was fairly collected or commuted for money or land, would, he believed, produce 2000l. per ann. yet, out of this property, he was persuaded, that the rector procured from it but a mere pittance. He made one attempt to do himself justice, but it miscarried. He attended to take his tythes in kind, but the farmers constructed bridges across the dykes, in order to remove their crops, leaving the tythe for the clergyman; which, when they effected, they demolished the temporary bridges, and then left the clergyman to get his property as well as he could, which was out of his power, unless such part as he was able to convey over the bridges while the farmers were drawing home the harvest.

It was with no small degree of embarrassment he ventured to differ from the noble Lord on the woolsack; nor should he have rose had he not been invited, as it were, to give an opinion on the subject, by the manner the noble Lord had treated it. The noble Lord, from his habits of life, had not an opportunity of being acquainted with several circumstances necessary for a clear and perfect understanding of the receiving tythes in kind, and commuting for them in land or money; and he thought it incumbent to make this observation,

tion, the rather becaufe, he was fure, if the learned Lord was in poffeffion of thofe circumftances and facts fo neceffary to form a judgement of what was fit to be done, the learned Lord's feelings, his humanity, and his eager defire to promote peace, happinefs, and good neighbourhood, would have led him to give his warmeft fupport to the bill, inftead of oppofing it. He hoped the learned Lord would excufe him; but, for want of proper information, he found himfelf obliged to declare, that as far as he was able to form a judgement on the fubject, his Lordfhip had conceived notions extremely repugnant to thofe he would and muft have conceived, had he been fufficiently informed on the fubject.

The noble and learned lord, in his zeal for what he conceived to be the rights of the clergy, treated the fuppofed differences arifing between the incumbent and his parifhioners as fo many weak and childifh apprehenfions. He would not enter into a difcuffion how far thofe bickerings and difputes were always well founded: but this he was free to fay, that many perfons, and fome of them able, well-informed, and inftructed by the moft unerring authority, that of experience and ocular demonftration, would be apt to confider arguments founded in alarm and apprehenfion for the rights of the church, full as weak and unfounded, if not more weak and childifh, than any which had been fuggefted to fhew the expediency and found policy of adopting every meafure confiftent with the rights of the refpective parties, which might promife to remove all caufes of difcontent and parifh-controverfy.

He had mentioned one inftance of a cafe which came within his own knowledge, in which it would be the happieft circumftance imaginable, if the incumbent had had his fhare carved out for him in land; and he was fure, that were he to confult his memory, he could quote fimilar proofs, which would take up their Lordfhips till midnight to recite. He had frequent opportunities of knowing it himfelf; and in his neighbourhood, which had been an open country, but was now happily inclofed, (he would fay happily for all the parties) inftead of the parfons and farmers being perpetually quarrelling and going to law, all was harmony and good neighbourhood. The revenues of the church, in point of actual receipt, were confiderably encreafed, the landed property was much augmented in its annual value, and the farmers grew rich. He had himfelf, he was free to confefs, profited confiderably as a land-owner, and was anxious to ex-

tend those benefits to other parts of the kingdom, though he had no prospect of being a partaker, or to reap the least advantage; nor could he help repeating, that he saw no inducement there could be to obstruct inclosure bills, unless it were from a wish to breed discontent, and create animosity between those who, from every motive of common interest and natural connection, were bound to each other by the strongest ties.

His Lordship animadverted upon several facts stated by the learned prelate who made the motion of recommitment, observing, that the facts so stated remained to be proved, and if they had been proved, by no means warranted the conclusions which the learned prelate had thought fit to draw from them. On the whole, being a real friend to the principle of inclosing, and seeing nothing in the present bill which took it out of that general rule or principle, he would vote for receiving the report immediately, and of course give his negative to the learned prelate's motion for recommitting the bill.

Bishop of Llandaff

The Bishop of *Llandaff* (Dr. Barrington) rose after Lord Sandwich. He said, that if the whole of that day's debate had been confined within the limits of the original question of recommitting the Ilmington inclosure bill, he should be very incompetent to deliver his opinion on its merits. He had been but a few days in town, and had never seen the bill till he came into the House. The light, however, thrown upon it by the learned Lord on the woolsack, the uncommon ability with which he had gone through each distinct clause, the various unanswerable objections he had urged with a force of argument peculiar to himself, had left no doubt in his mind what opinion he should give.

With regard to the incidental matter which had been blended with the proper consideration of the day, he should be ready to meet it in its full extent, whenever a time should be fixed for its discussion. It was a question which involved in it a variety of the most important points which could possibly affect the whole of a most useful and respectable body of men, the parochial clergy; and which therefore should not be decided but upon the most mature reflection. He would, however, so far enter into the proposition opened by the right reverend prelate who spoke first, as to declare his concurrence in the general doctrine laid down by his Lordship. He meant not to tread over again the same ground, he should only press an argument which the right reverend prelate had left untouched,

touched, and which continued to ftrike his mind, after nine years view of it, with its original force. One confequence, he faid, of commuting tythe for land, was fubjecting the clergy to all the burthens of landed property. Some of thofe burthens had not yet been felt; they would ultimately, he feared, be deftructive; but he begged their Lordfhips to confider what muft be the fituation of a clergyman, whofe all depended upon the land allotted by the inclofure? The immediate advantages derived from an increafe of income, were more than compenfated by the heavieft future inconveniencies, which, as they were remote, were unfortunately neither forefeen nor attended to. Taken on either fuppofition of the incumbent's occupying the land himfelf, or letting it to a tenant, the event muft, in procefs of time, prove equally fatal to the church. Ill cultivated, impoverifhed, and exhaufted ground, defolated fences, dilapidated barns, an infolvent landlord, and an undone tenant, muft leave the fucceffor without relief, and without remedy, to bemoan, in fruitlefs wifhes, the ill-judged exchange. With refpect to the prefent conftitutional provifion of tythes, he was free to acknowledge, that it was attended with occafional difficulties, though thefe difficulties had, in his opinion, been confiderably over-rated, both as to their magnitude and frequency. The clamour raifed from the few incumbents who received their tythe in kind, was ftudioufly propagated, while the filent meritorious moderation of the many who benefited their parifhioners by an inadequate compofition, remained either unknown, or ftudioufly fuppreffed. The queftion had hitherto been argued only on the idea that there was no third mode. Should, however, the legiflature determine, contrary both to his fentiments and his wifhes, to annihilate tythe in future bills of inclofure, he would juft hint then, as a matter deferving their Lordfhips future confideration, the fubftituting a corn rent on the principle of the well known act of Queen Elizabeth, which regulates the payment of referved rents in collegiate leafes. There were two affertions, he faid, which had been rather unguardedly advanced by the noble Earl who fpoke laft, which, but for the liberal profeffions of regard to the clergy, and zeal for their interefts, he fhould have fufpected to have proceeded from an enemy, rather than a friend, which he could not permit to pafs unnoticed, or allow the Houfe to be adjourned, and the numerous attendance at the bar difmiffed, unreplied to. The noble Earl had afferted, that the parochial clergy of this country

country were amply provided for. The only answer he should make, was stating a single fact, from which, uncommented upon by him, he should leave their Lordships to draw their own inference. The livings which did not exceed 50l. a year would not receive their complete augmentation in less than three centuries: The second assertion of the noble Earl contained a charge of a heavy nature indeed, no less than that of a premediated design to encroach on the rights of the laity. From whence did the noble Earl collect his evidence of this design? Did the learned Lord on the woolsack frame, or was he only a subordinate agent in this hardy project? how came the right reverend Prelate, who espoused the same side of the question with the noble Earl, to have opposed this beneficial plan? The learned prelate concluded with observing, that the clergy of this kingdom felt and acknowledged the blessings of an establishment fixed and ascertained by law. Incorporated with the laity, connected in one common interest, citizens of the state, holding their property by the same laws, they must be mad indeed could they for an instant forget the obligations they owed to a lay legislature, or entertain a thought of engaging in a combat which must terminate in their inevitable ruin.

The Bp. of Peterborough.

The *Bishop* of *Peterborough* rose a second time, in order to answer something which fell from the noble Lord on the woolsack. He said, he always paid a proper deference to what fell from the learned and noble Lord; but he hoped his Lordship would excuse him from taking any thing as proved, merely on the authority of a name, for however high his opinion of any man's abilities might be, or exalted his character, as long as he had the honour to sit in that House he should think it his duty to deliver his sentiments freely upon any question submitted to his consideration. And, regardless of whom he might have the misfortune to differ with, he was much more anxious to act right, agreeably to his own judgement, than run the risque of acting wrong in direct contradiction to it.

His right reverend friend, the learned Prelate, who had opened the debate, had opposed the present bill principally on account of the allotment carved out by it for the rector in lieu of tythes. To that point he chiefly spoke when he first rose, and he must declare, that he heard nothing from the learned and noble Lord sufficient to induce him to change his mind, or become a convert to the learned Lord's opinions;

consequently, he would give his negative to the motion made by the learned Prelate for sending the bill a second time to a committee.

Viscount *Stormont.* Viscount *Stormont* said, he had been so perfectly convinced by the arguments urged by the noble and learned Lord on the woolsack, that he felt himself bound to vote for the recommitment. He did not at the same time commit himself so far as to oppose the principle of allotments in land, and commutations indiscriminately, and in all given circumstances and situations; nor on the other hand, to prefer tythes in the same manner. He believed either principle rigidly adhered to would be productive of great inconvenience, if not oppression and injustice; but in the case before him, putting the principle out of the question, the noble and learned Lord had, in his apprehension, stated so many solid objections to the enacting clauses of the bill, that, be its fate what it might hereafter, he thought it improper to pass it in its present form. He should not attempt to trouble their Lordships upon a subject which had been already so fully and ably discussed; much less would he go into a detail, respecting the impropriety of several clauses, the same having been so clearly pointed out by the noble and learned Lord. But under the impressions the learned Lord had made upon his mind, he was perfectly convinced, that the bill ought to be sent back to the committee, in order to be amended.

Duke of *Richmond.* The Duke of *Richmond* said, however disagreeable it might be to him to differ with the noble and learned Lord upon a subject of this kind, he must say, in every single point of view he considered it, he highly approved of the bill, and would of course vote for its being passed into a law. He confirmed, so far as came within his knowledge, which he said had been pretty extensive, the inexpediency of taking tythes in kind, and the numerous law suits, disagreements, and bad blood, it occasioned between the incumbent and his parishioners. In those parishes where tythes were taken in kind, it bred perpetual animosity and dispute; and even as to the point of emolument he solemnly protested, that he believed upon an average, the clergyman would be much better off by making a reasonable composition, by which his parishoners would even be considerable gainers, than by collecting his tythes in kind.

If the question was merely this, shall the tythe be taken in kind, and shall it amount to a fair tenth of what the produce would be, if there was a compensation in land or money? In

In that case, no composition however favourable to the clergyman would be an equivalent. But when the means those, who were to pay the tythe in kind took to make the Parson's part of as little value to him as possible, the number of hands, carts, &c. necessary to the collecting the tenths, the uncertainty of the weather, but above all, the discouragement it gave to cultivation, and the methods resorted to by the farmers, to forbear that species of husbandry which was best calculated to produce the most valuable tythe crop; he sincerely believed, that the incumbent did not receive in kind, after all deductions, any thing like what the same land would produce if it had been tythe free.

So far as to the principle of the bill,—which as well as he was able to judge, seemed to be totally out of the question. The learned Lord had indeed confessed as much, for he complained that the principle had been dragged into the debate, and pressed into the service of those who argued against the re-commitment, merely to puzzle, confound, and mislead those, who, approving of the enclosing the lands in question, might nevertheless wish to have the clauses amended. Here it was plain the noble and learned Lord had forgot himself, and even overlooked the grounds on which the motion was maintained by the learned Prelate who made it; that was, that enclosures in general were injurious to the clergy, that they were injurious in other instances, and that the circumstances under which they could prove serviceable, were so very few, although they might be productive of great evil, no solid advantage could result from them. The noble and learned Lord held nearly the same language, and by treating the accounts of parish disputes between the flock and pastor, as mere fanciful notions, which had no real existence; or if they had, ought not to be weighed against the policy and justice of taking tythe in kind, combated as far as in his power the principle of commutation either in land or money.

Yet when the noble Lord has fully debated the principle of the bill, what does his Lordship next do? He tells your Lordships, that the principle is totally beside the question, that all your Lordships have to do is to examine the clauses. His Lordship then proceeds, and in a very long and learned discourse, points out the numerous defects, absurdities, incongruities, and great injustice, those clauses are fraught with. To this he had only to answer, that the noble and learned Lord has urged his objections too late; for, as the principle should have been debated before the bill

was sent to a committee, so the clauses should have been discussed in the committee. The committee he understood was a very respectable one, and the noble Lord who generally presides in committees in the House [Scarsdale] presided up stairs in that on the present bill, so that nothing was wanting to give the proceedings all due weight. If indeed any extraneous matter or any thing contradicting the principle of the bill had been introduced into it in the committee, that would be a good ground for re-committing it; but as no such thing had been pretended, he thought it was now too late to re-model the clauses. He had another objection to part of the noble Lord's speech, which contained a kind of history of the slovenly manner private bills were wont to be conducted through another House. It was in his opinion, very improper to make use of a general argument against a private bill, unless it particularly applied, and the particular application were pointed out. It was no less improper to state instances of neglect, which did not relate to that House, upon a bill then under consideration in that House; and no less so to infer, that every bill was smuggled through the House, to the injury if not ruin of individuals, because one or two instances had come to his hearing by personal communications made to him by the parties themselves.

After several other arguments equally pointed and strong, he gave it as his clear opinion, that the principle as well as enacting clauses of the bill, having received the sanction of the House in its respective stages, he saw no ground for the motion made by the learned Prelate, expressing at the same time his extreme willingness to enter into a full discussion of the reasons, facts, and arguments, urged by the learned and noble Lord, whenever his Lordship should think fit to submit them to the consideration of the House; and if on inquiry, the mode of conducting private bills through that House should be found defective, or liable to abuse; he pledged himself, he should be one of the first who would co-operate with the learned and noble Lord in removing the evil, and in drawing up such resolutions, to be framed into standing orders, as would prevent the existence or return of such evils in times to come.

Lord Scarsdale.

Lord *Scarsdale* said, he had the honour of presiding in the committee, and declared he had seen nothing in the present bill which distinguished it from those numerous bills of the same kind, which passed every session, since he had the honour of a seat in that House. The committee was well at-

tended, ſome objections had been ſtated by the learned prelate who opened the debate, and one or two other noble Lords; but they were over-ruled, and in his opinion very properly ſo; upon the whole, he retained the ſame ſentiments now that he did in the committee, and would vote in the affirmative for the third reading, and of courſe againſt the re-commitment.

Earl *Temple* ſaid, he found himſelf much embarraſſed when he was obliged to diſſent from the noble and learned Lord, but as far as his experience had enabled him to form a judgment, he was not at liberty to vote for the recommitment. In anſwer to ſome of the general objections ſtated againſt the mode of conducting incloſure bills in the other Houſe, he muſt confeſs, as long as he ſat in that Houſe, nothing of the kind ſtated by the noble and learned Lord ever reached his knowledge; yet he had frequent opportunities of knowing, having the honour to repreſent a very reſpectable county [Bucks] which neceſſarily drew upon him a conſiderable deal of attendance, which was generally eſteemed part of the peculiar duty of county members.

Earl Temple.

It had been well obſerved by a noble Duke, who ſpoke lately, that the proper place to modify clauſes, or to maintain objections againſt them, was in the committee. It certainly was, but ſuppoſing for argument ſake, which was not the fact, that the bill had been hurried through there, and the clauſes not properly examined, he could not ſee with what degree of propriety the right reverend prelate who opened the debate, or the noble and learned Lord who ſupported him, could mix an argument on the principle of the bill, with the objections to the clauſes, or apply general abuſes, which were preſumed to exiſt in the mode of conducting private bills through both Houſes, to a particular bill to which, in his apprehenſion, no ſuch objection lay.

The noble and learned Lord's particular arguments, however ably and plauſibly urged, being all founded upon the double miſtake, that the principle of the bill was now before the Houſe, and that a preſumed general abuſe was a reaſon againſt a bill, when no ſuch abuſe was proved to exiſt, he ſhould hold himſelf excuſed from making any additional obſervations, the queſtion having been already ſo fully and minutely diſcuſſed, were it not, that having ſtated the charge, he looked upon himſelf bound to ſtate likewiſe the grounds of it. The noble and learned Lord ſays, that a ſeventh or eighth (for he declares his ignorance whether it is a ſeventh

or

or eight) part, which is allotted to the rector, is not an equitable, fair composition, in lieu of the tythes to which he is at present entitled. What was this but directly controverting the principle of the bill, for if for thirty years past it has been an established rule followed in the framing of inclosure bills, to carve out such a share as a fair and equitable equivalent in lieu of tythes, it must follow clearly, that it was not the clauses merely, but the principle of allotment that the learned Lord had been combating. The same argument held good with respect to the other clauses, such as the nomination of the commissioners, the mode of carrying the act into execution, the equivalent to be given to the Lord of the Manor, and the dividing the soil afterwards among the freeholders.

His Lordship proceeded to make several observations upon what had fallen from the noble and learned Lord, respecting the clauses, and endeavoured to shew that his Lordship had mistated or misconceived almost every one of them.

He declared his entire approbation of the remark made by the noble Duke, that it would be extremely improper to recommit the present bill, though the mode of apportioning out the rights of the parties concerned, had been as faulty as the learned Lord had described; first, because the objections had not been urged in time, but more particularly, because the parties concerned in the Ilmington inclosure came exactly on the same footing, and with an equal claim as those who had applied to the legislature for the last thirty years; if for no other reason but that alone, he should be for passing the bill in its present form; because the rejecting of it would not only be a disappointment to those who wished to have it enacted into a law, but they would be put or led to a very considerable expence, under the faith of Parliament, and precluded the advantages they expected to derive from it by an *ex post facto* regulation.

If such allotments or compensations were found to be inadequate, if the church should thereby, if they were to continue, to be despoiled of its patrimony, if incumbents were to be ruined through their inability to cultivate, or by the lands being over-valued or thrown upon their hands; if peace and harmony were not to be promoted, nor the doctrines or person of the clergyman rendered more respectable and amiable; these were all considerations truly deserving their Lordships most anxious attention and inquiry. No person who heard him was readier to co-operate than he was in searching for truth, and probing it to the bottom; but until their Lordships were convinced of the necessity of going into such an investigation,

investigation, and of the probable benefits which would result from it; till their Lordships so persuaded shall have finally come to a determination, to put a stop to such commutations and equivalents; he trusted, that it would be very difficult to produce one sound reason to take the present bill out of the general rule, unless it could be proved that the provisions of it materially or essentially differed from bills of the same nature, and directed to the same objects.

He did not rely merely upon speculation for the arguments he had presumed to trouble their Lordships with; he had formed his judgment from experience gained out of Parliament as well as within it; he meant in the country and in his own neighbourhood, where there had been vast tracts of land, common fields, wastes, commonable lands, &c. inclosed; and he could affirm, upon his honour, that during the seven years he acted as a magistrate within the county in which he resided, and he was enabled to say, that his attendance at the quarter-sessions was pretty constant and uniform, his memory did not enable him to recollect that in the whole course of his attendance a single appeal had been brought before the quarter-sessions, complaining of any partiality or injustice in setting out or allotting the several portions by the commissioners nominated by the several acts, which proved so far as this circumstance could be supposed to apply, that the powers vested in the commissioners had been such as were approved of by the parties concerned, and that those powers had been faithfully carried into execution. Such being his general ideas, as well on the general principle of commuting tythes for compensations or compositions in land or money, as the particular provisions of the bill now before their Lordships, he found himself under a necessity of giving an hearty negative to the motion made by the right reverend prelate.

The Lord Chancellor.

The *Lord Chancellor* rose a second time, and declared, that he waited with anxious expectation of hearing something in reply to the objections he had presumed to state early in the evening, but he was sorry to say he had heard nothing which could lead to a conviction in his own mind that he had either misconceived the object of the bill, or had used any arguments in his speech but what were fairly suggested by the provisions it contained. He was far, as had been hinted by a learned prelate who spoke early, [Peterborough] from assuming to himself any superior abilities, or as laying any claim to infallibility. He was too sensible of the vanity of such pretensions in any man, and much more so in himself, who

wished

wiſhed rather to purſue an humble line, ſuited to his very humble talents and habits of life. But diſagreeable as it was to be taxed with arrogance and preſumption, he could much more willingly ſubmit to ſuch a charge, becauſe it could amount to no more than a proof of his folly or ill-founded claims, than to have his intentions arraigned, and ſtrongly arraigned, as wiſhing to diſſeminate diſcord and animoſity, for aught he knew, from one end of the kingdom to the other; he confeſſed that he owed more to himſelf and to their Lordſhip's than to let ſuch an accuſation as that go forth into the world without endeavouring to exculpate himſelf from what he ſhould ever deem to be not only a very ſerious, but in his apprehenſion, a moſt odious and criminal charge; ſo odious and criminal as to render him unworthy of a ſeat in that Houſe, or among any aſſembly of gentlemen whatever.

He aſſured their Lordſhips, that any inſinuation of the kind muſt have created very uneaſy ſenſations in his mind, but when the charge was made directly, it filled him with very great aſtoniſhment. He had examined his argument over and over again, he had endeavoured to refreſh his memory, he had laboured to recollect any careleſs expreſſion or phraſe which might have fallen from him in the hurry of debate, and which might give a reaſonable colour to the cenſure paſſed upon him by a noble Earl who ſpoke ſome time ſince, [ſuppoſed to mean Lord Sandwich] but all to no purpoſe? and if any expreſſion had dropped from him ſufficient to warrant the noble Lord's animadverſion, he could only plead ignorance or forgetfulneſs, for hitherto his attempts to recollect them had been in vain.

The words uſed by the noble Earl were, "that thoſe who endeavoured to ſend the bill again to a committee," or words to that effect, "wiſhed to diſturb the peace and quiet of the country." He hoped, that he had given no juſt cauſe for imputing to him ſo wicked, baſe, and ſcandalous a motive, if he had miniſtered no juſt cauſe for ſuch a charge, direct or implied, he made no doubt but their Lordſhip's would acquit him of any ſuch intention, and conſider this method of defeating an adverſary, to mean no more than thoſe ornamental flowers which men of great abilities, from the warmth and exuberance of their imaginations are apt to mingle in the moſt grave and ſerious diſcourſes upon the moſt important ſubjects; men, who operated upon the ſtrong impulſe of unbounded genius, and a rapid conception, ſuffer themſelves to be hurried away by the *tenens dicendi copia*, and thereby tranſgreſs in the bounds

rigid truth and justice. He prayed, whenever he had the misfortune to differ with persons of such distinguished he might add unmanageable, talents, to sacrifice the love of eloquence, or at least set limits to it, and not to throw a stigma upon him, which if really founded in truth, would represent him as a monster and not a man, who though not so highly gifted, would not yield to that noble Lord, nor he trusted to any other noble Lord, in the pride of endeavouring to the best of his poor abilities, to a faithful, honest, and conscientious discharge of his duty.

After his Lordship had pretty fully given vent to his feelings, he proceeded to answer such parts of the noble Earl's speech as he conceived bore the least relation to what he offered in support of the learned Prelate's motion when he first rose. He said the task though a necessary one was rather difficult, the noble Earl having dressed his arguments in such meretricious colours, surrounded with so many blandishments, and accompanied with such allurements; they might be said to have been so trimmed and decked out with false ornaments that the question lay buried or hid under them.

His Lordship then replied to the several arguments which had been urged in reply to what had fallen from the learned Prelate who opened the debate and himself, very much at length; in particular, he reprehended the noble Earl to whom he had been alluding, for the indecency of saying, that if the facts stated by the learned Prelate who made the motion were true, that they amounted to a general calumny upon the people of England; this was an unusual expression for one member of that House to use to another. The noble Earl had given an history of inclosing in his own neighbourhood, and of the great advantages which he derived from it in the improvement of his estate. If in argument he should presume, that the noble Earl had exerted all his influence and weight in that county or neighbourhood in which he resided, to procure those bills to be passed through both Houses, without having attended to the interests of the tenants, with that dignity of character, that generosity of mind, and with that disregard to any object but that of increasing the rent-roll of others, of enriching the farmer, and rendering the clergyman easy, comfortable, and respectable, in respect of property and the good will and affection of his parishoners; such an insinuation might bear a much nearer relation to calumny than any thing which had been stated by the learned Prelate who made the motion: So much for the morality of the question; as to the religion of it, he made no hesitation to give implicit credit to the noble Earl's assertion, that he would be ready

to lay down his life in defence of the constitutional rights and privileges of the Church; but no such sacrifice was requisite in the present instance, the religion of his country was clearly out of the present question, which was neither more or less than whether the property which the constitution had allotted for the support of the clergy, should undergo a total alteration, contrary to what had been customary for nearly a thousand years. The noble Earl's argument went that length, or did not at all apply; consequently he was at a loss to collect his Lordship's meaning, unless thinking that commutations in land or money were preferable to tythes, he was willing to risque his life in endeavouring to better the condition of the clergy.

The House was at this time extremely disorderly, so that we could not distinctly hear that part of his speech which was intended as a reply to the Duke of Richmond and Lord Temple, but it seemed to turn upon this, that the re-commitment of bills was as regular a proceeding as committing them; consequently, be the principle or provisions of the bill what they might, the motion rested solely on the merits, whether or not the objections taken to the latter, were such as were worthy of farther enquiry and investigation in the committee, where they had not been at first fully considered.

Earl of *Sandwich*.

The Earl of *Sandwich* declared, he was a considerable time at a loss to know what person the noble and learned Lord had been alluding to, and so ignorant was he that he had made use of any such expression as he at length understood was imputed to him, that he asked several persons near him whether he made use of it? if he had, he was ready to beg the learned Lord's pardon, for most certainly he never intended to give his Lordship the most distant cause of offence. He made no doubt that this declaration would be accepted of as a full apology for any unguarded words he might in the warmth of debate have inadvertently let slip; as he could with truth assure his Lordship, there was not a person living, for whose character and abilities he entertained an higher reverence and respect; and so far from throwing out any insinuation of a tendency such as the learned Lord had conceived, that he would appeal to his Lordship's candour, if he did not say, "if the noble Lord was fully acquainted with the subject, he was persuaded his humanity would induce him not to oppose the bill?"

As to the powers of persuasion and eloquence which the learned Lord supposed him to possess, his Lordship well knew he neither possessed or laid claim to them. His talents

were unhappily much circumscribed, and as to oratory he never affected it. The most he aimed at was to make himself informed of his subject, and to convey his sentiments in a plain unadorned stile, such as to make what he said intelligible to his hearers. There were others of superior talents, and who affected other modes of expression. He envied no man the talents he possessed, having long learned the folly and absurdity of pretending to be what a man is not.

As to the question before the House, he had heard nothing but what rather strengthened him in his former opinion, having had frequent opportunities of knowing that commutations in land, in enclosure bills, were much preferable to taking the tythes in kind for all the parties, and he would suggest one additional reason, which did not strike him when last up; that if a clause for commuting land for tythes, or some other mode of commutation had not been introduced into inclosure bills, no such bills, so far as they respected cultivated grounds would have taken place, nor that spirit of improved cultivation and the reclaiming poor or barren ground would have ever prevailed, and of course we should never have those extensive inclosures, which are visible in almost every county in England, and which add at once to the extensive beauty of the country, to the increase of the aggregate produce of the lands of the whole kingdom, and to the very great benefit of numerous individuals.

Earl of *Radnor*.

The Earl of *Radnor* confirmed the arguments used by several noble lords who spoke in favour of the bill, and against the motion of recommitment, from his own experience. He said at the same time, he had not come to any pre-judgment on the principle, in the very large and extensive manner in which it had been argued; he was not therefore prepared to enter into that part of the question. The only point which seemed to him to be before the House was this, and merely this; did the present bill differ materially from the enclosure bills, which are customarily passed every session? If it did not, he saw no good ground for sending it again to a committee; if it did, most certainly it ought to be re-committed, and in that case, such deviation might be a sufficient reason for totally rejecting it; not having heard any alteration pointed out which took it out of the common rule, till he should, he must be against the motion made by the learned Prelate.

Earl of *Suffolk*.

The Earl of *Suffolk* was of opinion, that the present bill came before their Lordship under the faith of Parliament, and so far as the bill was supported by precedent and justice, it was intitled to their Lordship's countenance and support, but no farther. The noble Lord on the woolsack had, in his opinion, stated several strong objections, such, as if well founded, would prove the bill to be not warranted, either in precedent or justice; in that point of view he must confess he was for sending the bill again to a committee. If those objections could not be maintained no harm could be done, the bill would of course be reported and pass into a law, if they should appear to carry sufficient weight with them, the bill would very properly be rejected. He did not mean to bind himself by any thing he now said, as to the principle of the bill, but merely threw out his own sentiments as they arose upon the state of the argument on both sides.

Bishop of *Chester*.

The Bishop of *Chester* rose, he said, to express his satisfaction that the question had assumed a very different shape from that in which it seemed to enter the House. He observed, that he had been given to understand, that the great general question concerning the expediency of commuting tythe for land, in the case of inclosures, would be that day debated, and, perhaps, decided; and the manner in which the debate was opened had confirmed him in this idea. Under these impressions he had, he confessed, no small degree of anxiety upon his mind, as a matter of such extent and importance, could not, he conceived, be properly considered and discussed on so short a notice, and with so little preparation as the occasion allowed. But he was extremely glad to find that his apprehensions were ill-founded; and that the abstract question of commutation was only an incidental part of the debate, the decision of which would not at all depend on the fate of the bill then before the House. The noble and learned Lord on the woolsack had with his usual ability thrown such light on the subject, and made so clear a distinction between the two questions, as had given great ease as well as information to his mind, and had had left him under no doubt what part he should take. The objections stated by the noble and learned Lord to the bill under consideration, were, in his apprehension, so strong and unanswerable, that they would entirely decide his vote that night for the recommitment of the bill. But his Lordship said, he begged to be understood as acting thus solely on the grounds of those

particular objections to the clauses of the bill, and not with an intention to give any decided opinion against the commutation of tythe for land in the case of inclosures. This was a point of so very wide an extent, and so complicated a nature, that he had not yet been able to form any positive judgment upon it. As far as he could see his way, he was at present rather inclined to think, that there might be cases in which the exchange of tythe for land might be a desirable thing for the incumbent. In the case of enclosing common and waste land, it seemed to be allowed, that circumstances might exist, which would render it necessary to exonerate the inclosure from tythe, by some substitution or other. And he thought also, that there were other cases where it might be equally proper. In livings, for instance, which consisted almost intirely of common-field lands; if there happened to be inclosed, and no land was given the incumbent in exchange for his tythes, he might be a very great sufferer, and his benefice might be reduced perhaps one half: for whilst the lands were open they could not be converted into grass, they must necessarily continue always in tillage. But when they were inclosed, they might be, and frequently were, converted into meadow or pasture, the tythes of which their Lordships well knew were much less valuable than those of grain. Here therefore he thought an allotment of land should be allowed instead of tythe. But whether this should in all cases be allowed, he was by no means prepared to say. He thought that there were many inquiries to be made, and a variety of facts to be ascertained, both with respect to the proprietors of land and the clergy, before the general abstract question of commuting tythe for land could be properly determined. He was therefore very glad to hear that the consideration of this great point was to be put off to a distant day, when he doubted not but it would be examined with that attention, and discussed with that deliberation, which a question of such great magnitude and importance required.

Bishop of Landaff.

The Bishop of *Landaff* rose again, and offered a few words in explanation, but said he was well pleased to learn by what fell from the learned Prelate, was not at all to be understood as if the present question was to conclude the sense of the House upon the general principle of preferring commutations in land or money to tythes in kind, because he came totally unprepared to speak to it, as making that obligatory by law which was considered at present as arising from agreements founded on various local circumstances.

Earl

Earl Bathurst.

Earl *Bathurst* (Lord President of the Council) said, he would vote for the present motion, because it did not affect the principle of commutation; but he begged at the same time to add, that he preferred an equivalent in land, money, or corn, according to the peculiar circumstances to tythes in kind. He had sat eighteen years in the other House, and eight years on the woolsack, during which time many cases had come before him in another place and at the bar of that House, which fully convinced him, that inclosures and commutations in land were equally calculated for the benefit of the patron, the clergyman, and the parishoners. How far it might be proper to modify the principle, he would not pretend to say, but unequal as he might be to the task, if no other noble Lord should think fit to take it up, he meant to submit some propositions to their Lordships on the subject at an early day.

At nine o'clock the question was put, on the motion made by the Bishop of St. David's, and the House divided; contents for the re-commitment, 23; not contents, 31.

The motion being thus rejected the report was received; the bill read a third time, and passed. Adjourned to Monday.

April 2.

Earl Bathurst.

As soon as the private business was over, Earl *Bathurst* rose and observed, that a question had started up in the course of the debate on the Ilmington inclosure bill, on Friday, of very great and singular importance; a question, he begged leave to say, which in a greater or less degree, affected every foot of land within this part of the united kingdom; the matter he alluded to was, the debate upon the general principle respecting the policy and expediency of making commutations in land, &c. for tythes in kind. Much, he observed, had been urged for and against the principle, though properly speaking, the question was not *sub judice*, or before the House; yet, several noble Lords having gone so far into the discussion of that question, and entertained sentiments so diametrically opposite on the subject, he thought, that it would be very proper to bring it before the House unmixed with any extraneous matter. Having intimated something of a similar intention, when he had the honour of last addressing their Lordship's, he thought himself, as well on account of that intimation, as from the mere necessity of establishing some general rule for proceeding in the framing and passing inclosure bills in future, called

called upon to submit some propositions to their Lordships, which might tend to draw forth a decided opinion on the subject.

When the sense of their Lordships opinion should be collected on that point, he had it in contemplation to throw out some other hints, which he trusted might appear not totally unworthy of their Lordships farther consideration. Upon these general ideas therefore, he would now move, that their Lordships be summoned for Thursday next, for the purpose of appointing a day to take his intended propositions into consideration.

The House adjourned to Wednesday.

April 4.

Lord Loughborough.

As soon as the private business was over, Lord *Loughborough* gave notice on account of Lord Bathurst's absence, and his necessary attendance in another place, that it was the noble Earl's wish to have the order of summons which stood for to-morrow, (Thursday,) deferred till the next day. His Lordship then moved that this House be summoned for Friday next.

The Lord Chancellor.

The *Lord Chancellor* observed, that it would be more regular to discharge the first order previous to moving the second, and then move it, *de novo*, to whatever day the noble and learned Lord might think most convenient.—In consequence of which,

Lord Loughborough.

Lord *Loughborough* moved, that the former order be discharged, and the House be summoned for Friday next.

April 5.

Private business, no debate.

April 6.

Prayers being over, counsel were called to the bar to be farther heard in the adjourned cause of Wednesday and Thursday last, being an appeal from a decree of the court of session in Scotland, in which the Rev. D. Johnstone and others were appellants; and Mr. Chalmers and others respondents. It was relative to the tythe of fish, landed within the port of North Leith. The court below determined that fish were not tytheable upon importation, on a presumption that tythe was paid where they were caught.

The

Lord Chancellor. The *Lord Chancellor* rose, made a very long speech, and drew a line between the contending parties by moving, that such part of the interlocutors complained of, as went to take off the tythe or duty paid upon fish imported for home consumption, be reversed, and that such part of the fish as was imported for the purpose of re-exportation be taken off or drawn back; which was agreed to.

Earl Bathurst. As soon as the order of the day was read for their Lordships to be summoned, Earl *Bathurst* [Lord President of the Council] rose, and said, he should not have presumed to have troubled the House to be summoned for that day, were he not desirous of calling their attention to a subject of very singular importance. In the debate which had taken place on the preceding Friday, he observed, a right reverend Prelate [Bishop of St. David's] whose candour could only be equalled by his abilities, stated a question that merited the most serious consideration of the House, viz. whether the authorising of commutation of land for tythes in an inclosure bill, was or was not a measure beneficial to the clergy, and whether it would be consistent with justice and sound policy to continue this system of commutation or an equivalent in land in lieu of tythes, which the learned Prelate observed was but of modern invention, and had been only introduced since inclosure bills had become so very frequent. This question their Lordships in general he doubted not, would perceive to be a question of great magnitude, and to involve in it consequences of the deepest and most interesting kind. Another right reverend Prelate [Bishop of Peterborough] who spoke second in the debate had declared himself of a contrary opinion; and contended that tythes in kind might be well commuted for land or money, agreeably to existing circumstances, and and opposed reasonings of considerable force to the arguments of his learned brother; surely then their Lordships would agree with him, that the question if upon no other account, deserved their utmost attention. Several other noble Lords avowed similar sentiments to those avowed by the two learned Prelates. The question so far as it was before the House, or could be fairly considered, underwent a very full and detailed discussion, and the result of what passed on that occasion was yet recent in their Lordships recollection. It terminated in favour of an equivalent in land by the opinion of a very decisive majority. In the course of the debate, it was true, many things foreign to the point, but immediately connected with the bill then under consideration, had arisen, and the whole of the debate had taken so different a turn, that

sight

fight was lost of the noble Prelate's question altogether, and the arguments of the day were brought to a conclusion upon very different grounds; it was in order therefore to bring their Lordships back to the discussion of that question that he had taken the liberty of moving to have their Lordships summoned. The mode, that with the leave of the House he would pursue, should be to move for a committee of the whole House on Wednesday next, if agreeable to their Lordships, to take the subject into consideration.

In that committee he meant to offer a set of propositions in the form of resolutions, the tendency of which he would open to the House. The first resolution was in purport, "that it is the opinion of this House, that inclosures of commons, waste lands, forests, and open fields, are highly beneficial to the kingdom." His Lordship went into a history of inclosing commons, waste lands, &c. shewing, that in the reign of Henry VIII. and of his successor Elizabeth, there was a prevailing idea that they were detrimental, and a variety of statutes were made to forbid them. In the reign of James II. however, men began to change their opinions, and the question assumed a new face. Since that period, the advantage of inclosing commons, waste lands, and open fields, had become gradually more and more obvious, and so fully had prevailed with the legislature, that within the last thirty or forty years, nearly nine hundred inclosure bills had passed both Houses of Parliament, and received the royal assent. He farther said, that he had particularly inserted the word forest in his propositon, because he was convinced that great good would accrue if more of the forests of England were cleared and inclosed; and in this part of his speech he paid some handsome compliments to a noble Marquis, a member of that House, [Rockingham] for the pains he had taken in getting two different bills passed for the inclosing forests. Concluding, that inclosure bills in genera manifestly tended to the benefit of agriculture, tillage, and husbandry; to the employment of the industrious; to the decrease of the poor's-rates; and to the general wealth of the kingdom.

This he begged leave to assure their Lordships was not an assertion founded in theory or speculation, or from even local experience, or particular or peculiar circumstances, but was supported by so general a stream of evidence that he could venture to appeal to every noble Lord who heard him, but who might differ with him as to the point of eventual policy

expediency, whether they had not in their respective neighbourhoods been eye-witnesses of the great benefits derived from inclosure bills.

He next proceeded to state his second resolution, the substance of which was, "that it is the opinion of this House, that commuting of tythes in certain cases of inclosure, where it can be done with justice, for an adequate compensation of corn or land, is a measure equally beneficial to the clergy and the landholder, and ought to be encouraged by the legislature." This proposition, he said, was meant to have a retrospective as well as a prospective view; for, as so much property had been already affected under this species of tenure, it would operate in a two-fold manner: it would tend to quiet the minds of those who already held possessions under the faith of Parliament, no matter whether clergy or laity, and encourage the proprietors of lands not divided, to apply to Parliament in time to come. He quoted a part of Speed's Chronicle, in which a conversation is related, and declared to have passed between William the Conqueror and a certain rich Abbot. William, tracing the usage up to the most remote and ancient times, and maintaining it upon several historical proofs particularly stated. Among others, William put it as a question to the Abbot, how it happened that he conquered the whole kingdom by a single battle, when the Danes had fought so many, and were not able to effect a conquest? the Abbot replied, that when William landed, the kingdom was in a very different state and condition from that in which it stood when the Danes invaded it, and made their efforts to subdue it, the churches having swallowed up so much of the possessions and wealth of the kingdom, that it was the interest of the subject to prefer a religious life; this operated as so strong an inducement, that great numbers went into the monasteries, priories, and other ecclesiastical institutions, and sought the preferments to which the religious were alone eligible, that there were not martial men enough remaining to make up an army sufficiently powerful to repel an invader or guard the kingdom. William, as Speed states, profited by this answer, and in order to enable himself to collect forces enough to avert the danger of invasion, and preserve the subjects from all attacks of a foreign foe, as well as to maintain peace and good government internally, proceeded to strip the religious, and particularly the Abbot he had questioned, of a considerable part of their possessions, and to abolish and curtail such of the religious institutions as were least useful.

His Lordship next proceeded to shew that till the Reformation the clergy taxed themselves, and the means by which that mode was altered, he believed, few of their Lordships were particularly acquainted with. The change was effected in this manner, not by an act of Parliament, a resolution of either House, nor even by any royal proclamation, but solely owed its origin to a written agreement, the record of which he had seen; it was signed by no other persons but the Lord Chancellor and the Archbishop of Canterbury, early after the Restoration, who were, in fact, the only contracting parties to the agreement by which the parliament, the clergy, and the nation had bound themselves by a tacit consent or silent acquiescence. The tenor of the agreement was, that the clergy should give up the right of taxing themselves, provided they were allowed to vote for members of parliament, and by that means have a share in electing the representatives of the people, who were entrusted with the power of taxing the kingdom at large. Under the authority of this agreement, he said, the clergy had for so many years paid taxes equally with every other description of his Majesty's subjects.

His Lorship's third proposition was in substance, "that it might be expedient to give a compensation in land, money, or corn, where tythes were already usually taken in kind, or where no composition existed." This, he observed, would only operate in cases where the parties interested were equally well inclined to come to such agreement, and would of course be entirely optional, and calculated merely to pave the way, to procure a good understanding between the pastor and his flock, which he trusted would promote the mutual interest of both, and a friendly correspondence between them.

His last proposition, he said, would be introductory to a bill. It had been objected by the learned Prelate who made the motion on Friday, to commutations in land, that the clergyman, thus transformed into a land-owner, would be subjected to many inconveniencies, if not liable to great losses, that those who already had accepted of commutations in land were seduced in the first instance by the lord of the manor, or some considerable land-holder, by an immediate advantage, to agree to accept of an increased revenue; that in some instances the rent agreed for was badly paid; in others, that those agreements originated in collusion; the clergyman in possession, being secured an increase of his annual income during his life or incumbency, in prejudice to his successor, who, coming to stand in his shoes, would find himself necessarily obliged to make a choice of some one or other of the following in-

conveniencies. He would, if that were the case, be obliged to agree to the rent accepted of by his predecessor, or if the bargain was a collusive one, he would be obliged to take whatever rent might be offered, perhaps not more than two thirds or half of what had been agreed to be given for the rector or vicar's part, before the inclosure bill was passed into a law: or lastly, he would be necessitated to take it into his own hands, without any ability to cultivate or draw from it any benefit whatever. The fences might be levelled or broken down; the barns or other erections gone to ruin; and instances might happen, said the learned Prelate, similar to one which had come to his knowledge, where the clergyman had been presented and inducted, but sooner than accept of what would have proved to him rather a disadvantage than profit, the living and the duties annexed to the actual possession of it had been abandoned; in consequence of which, the portion of land set out for the clergyman had lain neglected and disowned, and divine service had been discontinued within the particular parish alluded to. The learned Prelate had not confined himself to a particular instance on Friday, but argued the point as applying to the probable grievance resulting from leases for the term of twenty-one years, which had been authorised in all inclosing bills passed of late years, by a special clause, in which as he had just observed, delapidations, pretended compositions, insolvent tenants, &c. would be among the leading evils whereby the successor would be left without relief and without remedy. These certainly were considerations worthy the serious attention of their Lordships, and he could not but confess himself much indebted to the right reverend Prelate for suggesting them. In order however to guard as much as the nature of the case would permit, against these evils, he proposed to prepare a bill that would operate as a preventative; but as the matter he was perfectly aware, required great nicety and great caution, his idea was to bring in such a bill as he had mentioned, and proceed with it so far as to have it printed, and then let it remain on the table till the next session, that every one of their Lordships might have full time to digest his thoughts upon it; to place it in every point of view; and to be able, when the subject should be resumed in the next session of Parliament, to speak his opinion upon it decidedly, and without reserve. With regard to the resolutions which he had stated to their Lordships, his intention was, if the House (when in a committee, and when the topics the resolutions turned on, respectively, had been properly weighed

and

and discussed) should agree with him, that the resolutions were founded on facts, and were wise, politic, and expedient, to move that that those resolutions be voted; but he should not think of bringing in the report to the House till after the holidays, that their Lordships might have time to prepare for their reconsideration.

Before he sat down, he would just say a word or two in answer to an objection that had been taken to the mode of commuting tythes for land, by the right reverend Prelate to whom, in the course of his speech, he had so often alluded. The learned Prelate stated, that the practice of commuting tythes for land tended to bring land into mortmain, and as land in mortmain was much more inconvenient in a commercial country than tythes in mortmain, the right reverend Prelate observed, that the practice having obviously such a tendency, was one reason among many why our ancestors thought tythes the best and properest maintenance for ecclesiastical persons. Men, it was his duty to observe, were very apt to catch at particular words and phrases that had been used to create a strong impression, and had at one time or other been popular from their signifying something which might or might not have been the source of great advantage to the kingdom. Mortmain was a phrase of this description, the true import of which he would explain to the House: his Lordship then gave an account of its etymology, and shewed the nature of its application. The term he declared was first used, as applicable to those lands which were so held, as to bear out the sense of the phrase of their being in main-mort (in a dead hand) because the holders of them were not obliged to send out knights to join in the military service of the kingdom; and at that time of day, lands in general were held by no other tenure than those of suit and service; but would any man say, that lands were held by the same tenure now? certainly they were not; and therefore the whole of the argument about mortmain fell to the ground: and the reason was this, as lands held in mortmain were free from every species of feudal service, while that service continued, when a tax upon land was instituted in its stead, and the clergy by their representatives in parliament began to tax themselves, the objections against that species of tenure from that moment ceased to exist, with the cause which gave it birth.

His Lordship, in the course of his speech, took notice of various other matters that had occurred in Fridays's debate, and which were applicable to the question he wished the House to go into a committee upon. He particularly advert-

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ed to what had fallen from another learned Prelate [Bishop of Landaff] who spoke on a former occasion, relative to a substitution of corn-rent in lieu of tythes, should the House determine to annihilate them in future bills of inclosure; and said, that consideration, and an infinity of others would naturally suggest themselves, and would become the proper topics of discussion, when the house were in a committee as he had proposed. He also begged their Lordships to take notice, that he had not drawn up his second resolution in such terms as to make it extend to an universal abolition of tythes upon inclosures, but merely in certain cases, where a compensation could with justice be made to the minister; and and he particularly wished, that the House would not once entertain a thought, that his ideas loosely and generally as he had thrown them out, were founded on the most distant intention to abridge the parochial clergy of their natural rights; on the contrary, he flattered himself that both clergy and laity would be materially benefited should the propositions he had suggested be adopted, for nothing could be more contrary to his wishes than to prejudice the church and the ministers of it; and he thought once more necessary to make himself understood on the subject, which was not pointed exclusively to compensations in land, even in inclosure bills, much less in in any other, but was to be varied according to local and other circumstances. The learned Prelate who first moved in this business, had stated an instance where a corn-rent had been substituted for a compensation in land, at the express desire of a most reverend Prelate some time deceased, [the late Archbishop of York]. He turned to the record, and found the fact to have been faithfully and correctly stated, and the provisions of the bill ably and accurately drawn up; but whether the compensation or equivalent was given in land or money, or in corn rent, would be in his opinion of very little consequence, provided it was a fair and equitable one, calculated to defeat the possible or probable abuses pointed out by the learned Prelate; namely, the preventing any injustice being done to the incumbents for the time being; the defeating or diminishing the estate his successor would be otherwise intitled to; or the stripping the church of her just rights and constitutional patrimony.

He would just beg leave to add a single observation before he sat down, which was, his motion for leave to bring in a bill had this object and this only, that of the framing the skeleton of a bill after the holidays, which he meant should go no farther for the present session; but, by being printed,

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their Lordſhips would have the whole receſs to examine the principle, and fully revolve the ſubject in their minds; ſo that early in the next winter they would be fully enabled to give a decided opinion upon its policy or inexpediency. With this intention only he had preſumed to trouble their Lordſhips upon a ſubject of ſuch vaſt importance; and upon this view of it, he truſted to their Lordſhips candour, if the ſubject ſhould be deemed at all worthy of future dicuſſion or deliberation, he was intitled to ſome degree of favourable attention.

He begged their Lordſhips pardon for troubling them ſo long; thanked them for their unmerited indulgence; and concluded with moving his firſt propoſition.

Biſhop of *Landaff*.

The Biſhop of *Landaff*, after paying ſeveral handſome compliments to the abilities and candour of the noble Earl who ſpoke laſt, and teſtifying the full conviction which imprinted itſelf on his mind, of the purity of his Lordſhip's motives, proceeded to deſcribe the vaſt magnitude of the queſtion when combined with its various relations, and probable if not certain conſequences; and farther obſerving, that the propoſitions hung out by the noble Earl would, in his his opinion, lead to matters no leſs novel than dangerous, that of modelling the whole ſyſtem of tythe-laws, as they had now remained for ages; an intended innovation, in his apprehenſion, of the moſt alarming nature; a propoſition which would not merely operate upon a particular ſubject or ſpecies of property, but which would extend itſelf to the whole tytheable property of the kingdom.

The noble Earl's firſt propoſition was, he apprehended, founded in error in point of fact as well as in theory. The noble Earl laid it down as a kind of truiſm, or propoſition, in its terms commanding univerſal aſſent as ſoon as made known; "that it would be of general benefit and utility to encloſe foreſts, waſtes, common and commonable lands," &c. This was the firſt propoſition the noble Earl propoſed to aſſemble their Lordſhips to diſcuſs and vote on Wedneſday next. He thought it his duty to diſſent from, and deny the univerſality of that propoſition, and at the ſame time, and in this ſtage of the buſineſs, to add his reaſons.

He endeavoured to inform himſelf upon the ſubject, and had learned, that the principle of encloſing all lands, within the deſcription ſtated, admitted of many particular if not general exceptions. In corn grounds it had been proved, independent of the great waſte of land and expence of encloſing,

closing, that enclosures were unfavourable to agriculture, and to the cultivation or produce of corn. The crops were subject to blights and mildews, from the shade of the neighbouring trees and hedges which obstructed the passage of the air, while it excluded the sun, and of course threw a shade which was extremely unfavourable to the ripening of the corn. Trees, hedges, and shrubs, were besides apt to generate vermin, and many other evils of a similar nature, which proved extremely destructive; whereas in open fields, the corn was free from those evils, and the farmer or grower always found it to be of a better and superior quality, and encreased in quantity as well as in goodness. If this should prove to be the case, as he made no doubt it would, upon a full and mature enquiry, when called upon to vote an abstract question, directly contrary to what he believed to be true, he thought it best to communicate his sentiments thus early, rather than by giving his assent in this stage of the business, seem to approve of that which for the reasons now stated he previously meant to oppose.

His Lordship dwelt particularly upon the danger of shaking ancient foundations, and removing ancient land-marks, which had stood the test of ages, and which he believed could not be changed to any real advantage or benefit, but might in the end lead to injustice, or to the utter subversion of the ecclesiastical establishment of the kingdom, and of course, as forming a part, and a very considerable part, deeply affect and endanger the constitution itself. Besides the general argument, he appealed to every noble Lord who heard him, who had paid the least attention to agriculture or to the improvement of lands, whether there was any one mode of cultivation respecting arable or grass lands which could be applied with success to every kind of soil, to every species of property, or every modification of right. He was persuaded himself of the contrary; they differed intrinsically and extrinsically. In some instances local prejudices would prevail, custom would govern in others, and temper and disposition in many more. What would be of infinite benefit in one place would prove mischievous in another; and what would be accepted of with infinite satisfaction by the inhabitants in one parish would perhaps be execrated in a neighbouring one, and cause those animosities and incurable disagreements between the pastor and his flock which it was the professt intention of the present resolutions to remove; and con-

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ly instead of promoting peace and union between the clergyman and his congregation, they would, if agreed to, create endless contests, litigations, and disputes.

He was perfectly convinced of the noble Earl's commendable zeal, and if he was as certain of the practibility of carrying his general plan, of an equitable and fair compensation into execution, as he was of the motives which gave birth to it, he should be much readier to become a convert to his Lordship's arguments; but he had very strong reasons to doubt, that acts would be resorted to which would entirely defeat his Lordship's good intentions, and there was an instance stated by his right reverend friend, who moved for the committee on Friday [Bishop of St. David's] which he must consider as true in all its parts, because he had not heard it controveted or disputed, he meant that of the portion carved out by the incumbent, being abandoned by his successor, and divine service in consequence thereof discontinued. He was satisfied of the abilities and zeal of the noble Earl, but still he was fearful of experiments, and that art, chicane, and fraud, in the various shapes it might assume, would triumph over the best intentions, aided by the best abilities, when by a collusive agreement between the incumbent for the time being, or by the arts and management of the lord of the manor, the freeholders, and other parishioners, the eventual interest of the next incumbent might be materially injured or nearly annihilated; when at the same time, it would, in his opinion, be morally impossible to create any power of a superintending or controuling nature adequate to prevent the injustice or abuse in its origin, or remove or correct it after it had been perpetrated or permitted.

After urging several other arguments against the first proposition, he animadverted upon each of the following ones, in the course of which he made many pointed animadversions, equally tending to demonstrate the positive evils which must arise upon adopting the principle of commutation in general, and the inadequacy of any mode of prevention which might be adopted, sufficient to defeat or correct the evils which must naturally result from a system which would hold out temptations too strong to be resisted, and means of gratifying them he feared, beyond the power of legal detection.

He should be sorry to obtrude his opinions on their Lordships, while there were so many noble persons so much more able and fitter for the task; but he declared he could not in conscience remain silent, nor abstain, convinced as he was,

of the solidity of his objections, from imparting them to the House. He thought it his duty to declare once more before he sat down, that he trembled for the consequences of coming to an hasty or precipitate vote upon a matter of such singular consequence; and concluded with reminding the noble Earl, that though the resolutions should be voted, they would still require the sanction of an act of Parliament to give them operation. He wished besides to remind the learned and noble Lord, that although a bill or bills agreeably to the resolutions proposed by his Lordship to be voted on Wednesday next, should pass that House, before the same could be passed into a law, they must obtain the assent of the other branch of the legislature. Upon the whole, taking into consideration the vast extent of the question, the great variety of objects which it embraced, the advanced period of the session, the thin attendances which usually happen after the Easter recess, he would recommend to the noble Earl, to postpone the farther consideration of the proposed business till next session; otherwise, for the reasons he had presumed to urge, he should find himself obliged to give a negative to the motion, for the House resolving itself into a committee, for the purpose of taking into consideration the resolutions proposed to be submitted to that committe on Wednesday next.

The Lord Chancellor.

The *Lord Chancellor*, as usual upon such occasions, quitted the woolsack and came to his place at the head of the Dukes' bench. He began with observing, that as a member of that House, he stood in a very disagreeable predicament, and was much embarrassed; because, before he could with propriety enter into the consideration of the question, he found it necessary to remove some general impressions, and comment upon some circumstances which he believed had been misapprehended or mistated by those who thought fit to differ from him on a former day.

He had been described as a person actuated by childish motives, and acting under silly and absurd prejudices; that, full of zeal for the interests of the church, he had missed his way in the plainest road; and nourished ideas so contrary, wild, idle, and absurd, that while his wish and professions were avowedly to maintain the rights of the clergy on their true basis, he was so blinded and rivetted to his own childish opinions, that what he wished to obtain as an advocate, he defeated by the folly and absurdity of the mode, stile, and manner, he adopted in the pursuit of it. When persons of great rank, and still greater abilities; when persons who had

had filled the most important offices in the state; and whose private virtues, great talents, and approved experience, adopted such a language, he confessed he felt much on the occasion; because with the load of folly that was imputed to him, and perhaps very justly, another species of accusation was implied for which he could plead no apology; namely, an incurable obstinacy, originating in inveterate prejudices, and a froward resistance to the just and indisputable claims of so much public and private virtue! yet, however weak and childish his conduct had appeared to those who thought it worth their while to so represent it, it formed no part of the present question. The charge as a general one, might be well founded; but although he was ready to submit to the great authority he alluded to, it was his duty to observe how far the general censure was aptly and justly applied in the instance which gave birth to the observation.

It was said he was full of zeal for the church. He was so; but his zeal was not partial, or confined to the church, farther than it was connected with the other great national establishments, of which it formed a part, and no inconconsiderable one. There were many things, perhaps, in which he would not go as great lengths as some persons might; there were others, in which perhaps he would go farther. He did not mean however to assume any peculiar merit to himself, merely on account of that circumstance. He did not mean to insinuate, that because he differed in opinion from both parties, that therefore he was right. The middle path which he had struck out to himself, was taken from choice, not, he trusted, from any premeditated prejudices; and whether he was or was not mistaken, he could fairly say, that he had not been influenced by the opinions of others; what he thought on the subject proceeded merely from the suggestions of his own mind, assisted by that degree of attention which his other avocations and duties permitted him to give it, and what had struck him as just, wise, equitable, and expedient. For instance, some of their Lordships might think that a compensation in lieu of tythes ought not be given or accepted of in any given case; and others, that it would be proper to give or accept of a compensation in every given case; opinions widely opposite to each other. He was, for his part, equally averse to both extremes. He could frame in his own mind an infinite variety of cases, in which the claims of the patron, rector, or vicar, might be fairly, equitably, and he would add beneficially

ficially for both parties, be commuted for compensations in land, money, or a corn-rent; and on the other hand, perhaps, as many in which such a commutation would be every way inexpedient, inequitable, inadequate, and unjust. Nay, he he would venture a step farther than what in argument had been yet suggested on either side of the House. He could conceive peculiar circumstances in respect of property, which being so blended together, and the interest as well as soil so intermixed, as to render it perfectly justifiable and expedient, to divide and set out the common fields, &c. among the land-owners, without any reference whatever to the claims of the lay-impropriator, patron, rector, or vicar, he meant as to the mode of carrying the same into execution.

After laying before their Lordships this genuine state of his mind, he trusted he should be intitled, upon an avowal so serious and solemn, that whatever his zeal or his childish zeal for the church might be, it would be acknowledged, it was not merely a blind zeal, nor totally destitute of method and principle, be the former however absurd or the latter however erroneous. He flattered himself that even his warmest antagonists upon cooler reflection would confess, that although a better method might be easily struck out, that his at least aimed at system and uniformity, and though a better and sounder principle might be established, yet nothing could be fairly objected to it, on the ground of prejudice or partiality; because, if for no other reason, it would some times tend to operate for commutations, and at other against them, sometimes in favour of what had been imputed to him as the effect of mere zeal; at other times equally inimical to that cause, which it was insinuated he had blindly embraced, and blindly as well as obstinately adhered to.

It was urged, and perhaps with great justice, that the propositions, hung out by the noble Earl, were only objects of general discussion, and proposed to be matter of future re-consideration. For his part, however true that might appear to the noble mover, he could not see them in the same light. It struck him that they were precipitate, as had been well observed by the learned Prelate who spoke last. Their Lordships were called upon—to do what? to vote the resolutions first, and consider them afterwards. For his part, he had been so ill informed, and so silly to continue to think he had been rightly informed, that anxious enquiry, close and serious attention, and mature deliberation, ought to precede a fixed determination whether to adopt or reject; but, in the present instance, that stale maxim was meant

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to be exploded, and exactly the reverse proposed to be substituted in its stead. If he might be presumed to have an interest or wish either way, he could with truth say, he had never heard a single syllable or intimation of their contents, being totally ignorant of their tendency, nay even of their existence at all, before he heard them from the noble Earl; yet he was not ashamed to confess, that they were in their nature so extensive, various, and complex, that not only at the instant he was speaking, but at the period proposed to bring them forward, he neither was, nor could be ready to give a decided and satisfactory opinion on their contents That, to be sure, might be his fault, not that of the noble Earl. His talents might be of a size and texture unequal to the task. He might require time, great labour, and industry, to comprehend and judge of what in itself was simple and almost self-evident. He might be dull, slow of comprehension, and every way unprepared to decide upon a subject, in which men of sounder abilities, of more genius, and greater penetration, would find themselves free and unembarrassed. The noble Earl who presided at the head of his Majesty's councils, with so much credit to himself, and so happily for the nation, as well as some other noble Lords, were very probably fully informed, and their minds every way prepared to come to a vote. Why so? because, by their superior talents they had made themselves perfectly master of the subject, and learned as much by a very short and transient attention to it as would call for much labour and industry from others. Be that as it may, as a member of that House, and destitute of those gifts which others possessed, he had a right to contend for a more full and ample consideration, otherwise he would find himself obliged to come to a vote upon a subject in which he was not prepared to give one; while those, possessing the abilities he had been describing, not seeing the necessity of a more laborious discussion, would be perfectly at their ease, and from the sudden conviction pressing on their own minds, would forbear to make those allowances which men of dull apprehension, of tardy or imperfect conceptions, were in candour entitled to; but which men of a contrary description, not feeling any such defect in themselves, were often too apt to refuse.

After paying his compliments very handsomely to the noble Earl [Sandwich] whom he presumed to have represented him as a child, (we believe without doors) and to the noble Earl, whom he represented as presiding at the head of his Majesty's councils with so much credit to himself, and so happily

happily for the nation, [supposed to mean Earl Bathurst]; and after having endeavoured to describe himself as not quite so childish, obstinate, and partial, as had been so industriously propagated somewhere, his Lordship proceeded to take a nearer view of the question.

He believed, he said, that it had been a general rule, as well in matters of policy as legislation, as he had already taken the liberty to observe, to consider things fully and maturely previous to their ultimate adoption; and when they were finally determined upon and digested, to lose no time in carrying them into execution. He believed every noble Lord who heard him would subscribe to the soundness of this principle as a general one. He was, however, unfortunate enough to think, that the conduct of the noble Earl, in the present instance, was directly the reverse, and evidently subversive of that principle. Their Lordships were now, he would not say for the first time, but he hoped for the last, called upon to decide first, and consider afterwards. They were called upon to vote a string of abstract propositions, which might apply to any case, or to no case; and when their Lordships had resolved them, they were left to hunt for particular occasions of making a fit application of them. In his poor understanding, the more rational and regular mode of proceeding would be to wait till the occasion occurred, and then apply the principle to the particular case, not as it were to create the particular case, merely to exercise the principle.

He was, he must confess, an enemy to innovations in general, particularly innovations brought forward as the present were, because he presumed he had been so foolish to consider customs and usuages sanctioned by the approbation of ages, too sacred to be suddenly, he would not say wantonly changed, upon an idea of reformation, or of making things better, which it was fair to affirm were well enough. It was the maxim of a celebrated politician, whose character was sufficiently known to every noble Lord who heard him, [supposed to mean Machiavel] to endeavour to bring the constitution back to its first principles, and place it on its ancient foundations, in order to restore it to its primitive purity; which, from the general course of human events, and the never-failing mutability which they generate, it had imperceptably departed from. This it was which had frequently induced him to endeavour to shew the impropriety of making experiments upon mere theory, in order to render things better

better which appeared at the time not to want mending; first, because experiments in respect of great national objects were in themselves dangerous: secondly, because the evil or mischief should be first pointed out, even to create a pretence for innovating. Such a conduct was in his apprehension the very reverse of the prevailing opinion among modern statesmen; their endeavours seemed to direct the other way, not to an adherence or a wish to recur to first principles, but to deviate still farther from the original constitution, [supposed to allude to the Duke of Richmond, Mr. Burke, and some others]. No man could see to what the present proposed resolutions pointed, or where they might end. He had often expressed himself very fully on the subject of innovation and experimental state of reformation in that House, and had as often been supported and fortified in his arguments and opinions by a very able assistant, [Lord Bathurst] whose support he knew he must want that day. The payment of tythes had existed for many ages; it had been handed down to us from the earliest periods of the constitution. Tythes had been universally rendered to the clergy, as their patrimony, by all Europe. They had existed under the Saxon government, and were acknowledged by internal consent, he believed long before even they had received the sanction of the legislature. The payment of tythes stood therefore upon the most ancient and stable foundations: tythes had been established by custom time immemorial, and had an authority as high, respectable, and venerable as the constitution itself.

His Lordship, after fixing the high antiquity of the ecclesiastical constitution of this country, proceeded to state some of the obvious inconveniencies which might result from the introduction of change and innovation. He observed, that in political contemplation the ecclesiastical polity had been at all times considered as one of the pillars of the constitution. He had no occasion, he presumed, to refer to particulars. History afforded strong and undeniable proofs, at a period not very far distant, how dangerous it was to attempt to alter or innovate. The religious establishment was attacked; and the attack proving successful, that pillar of the constitution having given way, it shook the rest, and nearly overturned the constitution itself, and that in such a manner as to render its re-establishment extremely difficult.

For his part, he was averse to experiments of any kind, unless upon full and mature consideration. He had been

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long enough in the world to be a witness to several attempts of the kind; and if he might safely conclude or judge from the consequences, he saw nothing sufficient to induce him to make farther trials of a similar nature. The present age, he observed, was fruitful in schemes; every person who thought of one making no scruple of bringing it forward under the name of an improvement; but whenever they were or should be offered to his consideration, either as a member of the legislature or a statesman, he should always act with great caution and much doubt; and that because whatever came so powerfully recommended to him as to have received the approbation of the ablest men in the most enlightened times, ought not, in his opinion, be changed, till after the fullest consideration, or upon motives of the most manifest and urgent necessity.

The noble Earl's second proposition, which more particularly applied to the principle his Lordship seemed desirous to establish, was so framed as to recommend to their Lordships to come to a vote upon a question merely abstract. It was a deduction drawn from his first, which was not even attempted to be proved; and it recommended to give a compensation in lieu of tythes in certain instances;—certain, here, evidently referred to something which was to be the result of previous investigation and enquiry; and therefore, in his apprehension, would amount to a declaration on the part of their Lordships, that something was fit to be done, of which no previous definition was pretended to be given. In certain cases, or in certain circumstances, some case or circumstance ought to be stated or defined, in which it would be proper to act in such or such a manner. Before the case happened, or presented itself to their Lordships, it would be absurd to say what would, or could be fit to do; when it should or might happen, therefore, was, in his opinion, full time enough to determine whether it was a right or wrong measure.

The noble Earl said, that the principle, as he explained it, had been fully sanctioned and acknowledged upon a former occasion; he meant the principle of commutation, of giving land in lieu of tythes. He was unwilling to refer to what passed in a former debate, and much more so to call any determination of their Lordships into question or review: but, under this reservation, he deemed himself at liberty to observe upon what had passed the last day. The bill for enclosing

closing the lands therein stated, most certainly met with their Lordships concurrence; but he never understood, that the principle, as now brought forward by the noble Earl, had, or indeed, was properly at all under contemplation.

He begged their Lordships to reflect, notwithstanding what had been urged by the noble and learned Lord, respecting what passed the last day concerning the determination of the House upon the motion of recommitment made by a learned prelate, that although their Lordships might think a particular principle proper to be adopted respecting a particular private bill, it by no means followed, that the same principle, merely on the ground of prudence, was fit to be laid down in all cases as a general one, or to be adhered to in all cases that might occur; and though it might not be decent in him to controvert the propriety of that decision, or censure the conduct of the House on that occasion, he could never conceive that he was thereby precluded, or so far bound as to acquiesce under the extensive application of it, which the noble and learned Lord seemed desirous to make.

If he recollected right, that bill stood upon its own particular basis; an argument between the parties themselves, that on one side such a compensation was offered, and on the other that it was accepted of. When therefore he heard a rule laid down, which was to govern in all cases, and heard an instance adduced, in which that rule was thought applicable in a particular case, he confessed his total inability to discover how particular instances could be pleaded as an example on which to build a general rule. It might be perfectly right to commute upon some occasions; it might on others be equally improper; but if their Lordships agreed to vote the abstract question proposed by the noble Earl, their hands would be tied up in such a manner as to exclude all choice.

But if he disapproved of the matter, he no less disapproved of the manner in which the noble Lord had brought this question forward—just at the eve of a recess. He should think it improper perhaps at any time, much more now. But in what shape did it come recommended to their Lordships? In the first instance, as so many standing orders to be entered and recorded upon their Lordships Journals; and as to the bill, in the shape of a law. By the former, their Lordships were precluded from entering into the propriety or impropriety of any bill which came within the terms of

the standing orders; by the latter, their Lordships undertook to bind the other branch of the legislature in all possible cases. How decent or fit that might be, he should not pretend to determine; but this he was willing and ready to prove, that such a law, even in respect to their Lordships themselves would be idle and nugatory, as it declared in its principle not merely an act or law for the time, but was manifestly intended to bind their Lordships, as well as the other House, which so far as it was professedly meant to operate, amounted to a perpetual law.

His Lordship, after treating this subject in a most masterly manner, pointed out a great number of other inconveniencies which might arise upon the general principle of the noble Earl's proposed resolutions. Among others he controverted the allotment or portion carved out or meant to be carved out for the rector, vicar, or lay impropriator. In many instances the eighth, he contended, was not a fair equivalent in land; and if the general commutation of land, instead of tythe, were to take place, he doubted much that he would have a very able and probably a decisive support in that House. If the reformation was to be general; if all tythe was to be commuted for land, or any other equivalent, he had good reason to believe that many who heard him, who were not adverse to the voting of an abstract question might probably adopt another mode and stile of thinking on the subject — and he would tell his reason. Though they might not feel that childish partiality and prejudice for the interests of the church that was imputed to him, they would possibly feel other sentiments which might immediately point out to them the necessary protection of their own property. Several of the noble Lords that heard him who were the proprietors of lay impropriations, if the commutation was to be a general one would soon learn that an eighth would neither be a fair nor equitable equivalent; they would perceive that what they were to receive would prove inadequate; consequently his fears for the clergy, if he had entertained any, would soon cease, being tolerably confident when their Lordships, he meant such as were lay impropriators, understood that their interests and properties would be affected as well as those of the clergy by this new plan of indiscriminate commutation, they he made no doubt would not be so unmindful of themselves as to neglect, upon every future occasion which might arise, to take every proper and necessary means in their power as members of the legislature, that the compensa-

tion they were to receive was an adequate one, and ſuch as, without any diminution of the intereſt they were about to part with, might be deemed a ſafe and equitable equivalent.

From this remark his Lordſhip proceeded to ſtate the compenſation per acre in money, paid for the great tythes in Hartfordſhire, Hampſhire, and Wiltſhire, in each of which counties, poſſeſſing property, he ſaid, (if we recollected right in Hants and Herts) he could, from his own knowledge, ſpeak upon the ſubject. He contended from this, that if the reſolution was adopted, the clergy would ſuffer conſiderably; and elucidated his aſſertion in the following manner: He ſuppoſed, that the native value of land was ſo much, that this land, in a ſtate of cultivation, was worth ſo much more. He begged to elucidate what he meant to ſuppoſe, that it would let at ten or twenty ſhillings an acre, and when under corn it was worth ten times that ſum; he would ſubmit to their Lordſhips, whether a ſeventh or eighth of the land, or a rent equal to the ſeventh or eighth of the land, would be an adequate compenſation to the patron, incumbent, or lay-impropriator; no, nor he believed a fifth, becauſe tythe imported not a tenth, an eighth, or a ſeventh of the intrinſic value of the land, agreeably to the rent reſerved, but a tenth of it when in a ſtate of the higheſt cultivation and improvement. His Lordſhip ſtated an infinite number of other arguments, many of which bore exceedingly hard on the noble mover of the queſtion. In particular he ſaid, it was not very uſual in one noble Lord to wreſt a ſubject out of the hands of another, who had given notice, that he intended to bring the matter before their Lordſhips. A noble Earl had, as their Lordſhips would be pleaſed to recollect, given notice on Friday, that he meant to prepare ſome propoſitions, which, when he had properly matured, he had declared he ſhould ſubmit to their conſideration; why then was another noble Lord, merely from feeling his own mind more ready, and his ideas quicker upon the ſubject, to foreſtal the noble Earl? Was it from a conſciouſneſs of greater wiſdom, greater knowledge, or a rooted conviction that the ideas he had formed were the only good ideas that could be collected on the ſubject, and the only ones that were fit for their Lordſhips' countenance? By ſaying this, he begged not to be underſtood as meaning to inſinuate that his Majeſty's councils were not as wiſely preſided over as ever they had been at any time whatever; he only meant to obſerve, that there was no reaſon for their Lordſhips to be ſuddenly called on to decide up-

on a subject in five days time, which they were to be allowed a much longer time to think better of. His Lordship placed the question in many different points of view, and asked in what manner were the resolutions to be carried into execution? If as orders of the House, their Lordships undoubtedly were competent to make rules for the form of their own proceedings, in like manner as the courts below made rules for what were called the stile and practice of the court, but he did not conceive they were competent to make rules that were to bind the whole kingdom. At length his Lordship concluded with earnestly repeating his intreaty, that the House would not precipitately enter into a matter of so much importance.

Earl *Bathurst.*

Earl *Bathurst* replied, and complained of having been greatly misunderstood by the noble and learned Lord. Nothing, he said, could be farther from his intention than precipitancy; he had all through his speech expresly declared as much. With regard to the argument, that it would be irregular for the committee to decide, and then for the House to reconsider upon the report, let their Lordships recollect, that it was the rule of proceeding in every bill brought into that House for the repeal of a law, by which the religion or commerce of the kingdom might be affected, or in respect to a proposition of any kind which would affect ancient establishments, or which seemed to be of peculiar consequence and importance; it was indeed the established mode of proceeding, because it would open a door to a fuller and freer discussion. Their Lordships would in that case be at liberty to weigh and examine the proposition in all its parts and different relations; to hear objections to former arguments; to point out how far they had been answered or removed: In short, it would be in a committee of the whole House only, where a subject of such great extent, and embracing such a variety of objects, as it had been frequently well described in the course of the debate, could be fairly and sufficiently discussed and examined; whereas, if a proposition in the shape of a bill were made, and it were permitted to be brought to a second reading, the order of their Lordships' proceedings would not admit of any member rising a second time, but to explain, and of course many opportunities to examine the principle as well as provisions of a bill, would be denied in a debate in the House, which a discussion in a committee amply afforded. As to the other point, respecting the presumed impropriety of reporting the bill the same

day

day it was committed, that, he presumed to say, was perfectly regular; for if no amendment was made in a committee, a bill was reported the same day; but if an amendment was made, the bill was never reported till the next day, and then the House proceeded to reconsider it. He replied to several objections made by the noble and learned Lord who spoke last, hoping that their Lordships would not be misled, but would learn to make the just distinction between facts and assertions, misrepresentations and arguments, and laboured exertions of eloquence and sound reasoning, leading to a clear and indisputed conclusions.

He was sorry, but so it happened, that the learned Prelate who rose to answer him had totally misunderstood him, and in some particulars had mis-stated his arguments; and in this it was his fate to be peculiarly unfortunate, because he had taken uncommon pains to obviate the objections which he foresaw might be made to an hasty or premature decision, upon a subject every way so interesting and important. He begged leave to assure that noble Prelate, that it was never his wish or intention to precipitate the business, or press their Lordships to an hasty and sudden vote: he had, on the contrary, guarded his propoositions with all possible caution; and, so far from proposing to hurry the bill through both Houses at so advanced a period of the session, that he had expressly stated, that his wish was to proceed with it to the stage of having it printed, and then to let it lie on the table till the next session. Before his Lordship concluded, he said, he cared not whether the committee was deferred to that day six weeks or that day six months, so far was he from wishing to precipitate the matter in point of time, that he was perfectly regardless what manner their Lordships might think fit to dispose of the motion for the present, still resolving within himself the fixed resolution of bringing the question forward at a more convenient opportunity.

Bishop of St. David's.

The Bishop of *St. David's* said, in his opinion, the session was by much to far advanced to take the matter up at present He must confess, he had heard nothing sufficient to obviate those objections he had made on a former day to the principle of commutation; or rather had collected from the noble Earl's own mouth, fresh arguments against the passing such a bill. At the same time, it was a respect due to the noble Earl, which no person would controvert, that the part he had acted claimed every possible degree of attention and respect. In that point of view, although he was

not now disposed to vote for going into a committee on the noble and learned Lord's propositions; at a fitter time, and more convenient opportunity, he would chearfully enter into the business; and, as far as his very slender abilities might enable him, would meet the question fairly, and decide in favour of that side which seemed to him to best promote general benefit, and to be best calculated at the same time to protect the respective rights, claims, and properties of the parties concerned.

Earl of *Coventry.*

The Earl of *Coventry* said, he retained his opinion delivered the last day he had the honour to address their Lordships on the occasion, that commutation of tythes for land would be a measure of infinite benefit, and prove equally advantageous to the rector, lay-impropriator, the land-owner, and the farmer; nor had he heard a single objection stated that day, in the course of the debate, or upon the present occasion, of sufficient force or validity to alter it. Some objections respecting time and convenience had indeed been made that day, which might weigh against the noble Earl's motion for a committee on Wednesday next; but not one, that he had heard or attended to, which went against its principle and proposed objects. The time, he believed, was too short, as he understood the House would rise on that very day, or the next, for the Easter holidays. Many noble Lords who now attended would probably be out of town, and be engaged about their private affairs; he himself, perhaps, would be one of those. On that ground only he thought it would be better to postpone the consideration of the noble Earl's motion till after the recess, which would remove the only solid objection that appeared to him to be made to it. During the residence of noble Lords in the country, they might collect very material information; and as it was the professed intention of the noble Lord to abstain from pressing any bill to be passed into a law, a previous discussion of the subject, such as the noble Earl had announced, would fully prepare their Lordships to come to a final determination early the next winter, if it should be the sense of the House to entertain his Lordship's proposition. Here his Lordship applied to some noble Lord near him, to know to what day after the recess the House would probably be adjourned; after which, he said, if it should meet with their Lordships' approbation, he would move, that the noble Earl's motion, for the House resolving itself into a committee on Wednesday next be altered in the following manner, to Friday the 27th instant.

The

The Bishop of *Landaff* rose, and said a few words. He declared, that nothing was farther from his intention than endeavouring to misrepresent the meaning, or mis-state the words made use of by the noble Earl who made the motion; he never thought of applying the argument of hurry and precipitation to the bill meant to be introduced by the noble Lord. If he had so expressed himself, he assured his Lordship and the House, that he had not so intended. His particular objections were directed to the resolutions; which, if agreed to, were proposed to be framed into standing orders, which, in his opinion, would avail very little, if not adopted by the other House, for they would be only binding on their Lordships and not upon the other House. It was in that light merely he meant to state the objection, because the standing orders till sanctioned by the other House, would answer no one purpose whatever, and the time and attention which those propositions would take in both Houses, considering the very advanced period of the session, when they would be badly attended, fully, in his apprehension, supported the objections which the noble Earl imagined were made to his intended bill.

Bishop of *Landaff*.

Some confusion, or rather a sudden conversation arose about the table, which could not be distinctly heard below the bar; the first thing which was heard, was from the woolsack, which declared, "that this House do adjourn to Monday next."—Ordered,

The Duke of *Richmond* strongly objected to what he called this sudden and informal adjournment, which he contended was unprecedented. It was against all rule and order, he said, to adjourn the House in the midst of a debate, without any motion or notice whatever. There was a regular motion before the House, "that this House do resolve itself into a committee, &c. on Wednesday next." Until that motion was therefore disposed of, one way or another, either by a regular motion for adjournment, the previous question, or a direct negative, it was impossible to adjourn the House. The woolsack could only put the question upon a motion regularly made; in the present instance no such motion had been made, and if it had, no question had been regularly put upon it; but the noble and learned Lord on the woolsack had barely contented himself with putting the ordinary question of adjournment, as if no business whatever remained before the House undisposed of. Surely, it would be decent to wait for the noble Earl to abandon his motion before it it were thus set aside.

Duke of *Richmond*.

The

Lord Chancellor. The Lord *Chancellor* affirmed, that the motion of adjournment had been regularly moved by the learned Prelate, who spoke before the noble Duke, and that, as he understood, by the noble Earl who made the motion on which the House had been debating; arguing, that there was nothing irregular or contrary to the established mode of their Lordships proceedings, it was sufficient to observe, that a motion of adjournment, or the order of the day, amounted to a full negative to any question at the time depending before the House.

Earl of Coventry. The Earl of *Coventry* said, if a mere private suggestion was to amount to a motion, his public declaration was intitled to a preference. He had notified his intention as soon as the noble and learned Earl had concluded his reply, that if agreeable to his Lordship and the House, he would move that the motion be deferred till the first day after the recess, which would be the 27th instant, as he understood from some noble Lords near him, whom he had taken the liberty to inquire to what day it was supposed the House intended to adjourn. On this ground, and in respect of candour and regularity, unless the noble Earl himself chose to withdraw his motion, he thought himself intitled to move his motion in preference to any other which had been subsequently suggested.

Bishop of Landaff. The Bishop of *Landaff* said, he had been authorized by the noble Earl who made the motion, to move the question of adjournment, and suggested such consent to the woolsack, which was what induced the noble and learned Lord to put the question as he had done.

Duke of Richmond. The Duke of *Richmond* seemed by no means satisfied with this explanation. The consent of the noble Earl who made the motion, should have been notified by himself in a public manner. He was as capable of such a declaration as of making the motion, and supporting it in a very long and able speech; but allowing that the noble Earl's consent was as full and explicit as it had been described, such consent could in no way operate upon the established mode of conducting their Lordship's proceedings for taking it in either sense, that the noble Earl had consented to withdraw his motion, or that the learned Prelate, without any such previous consent, had suggested his intentions to the Chair in private, of moving an adjournment, yet neither the consent of the former, nor the suggestion of the latter, could authorise the woolsack to put the question in the sudden and unexpected manner he had put it; and in consequence of so doing, declaring the

sense

ſenſe of the Houſe to be, to adjourn till Monday next; one queſtion ſhould be diſpoſed of before another was entertained, and the motion ought to be announced in ſuch a manner, that the Houſe might have it in their option to agree or diſſent to it when they learned its purport, which he once more begged leave to repeat was not the caſe in the preſent inſtance.

Lord Chancellor.

The *Lord Chancellor* roſe in great apparent warmth; he ſaid, it was uncandid, if not indecent, to prevent any member from withdrawing his motions if he thought proper, and he was aſtoniſhed, that the noble Duke ſhould continue to perſiſt in his objections, after the noble Earl had intimated his wiſh to a learned Prelate near him, in conſequence of which the learned Prelate had conveyed to him ſuch intimation. The motion put was a motion of adjournment, he had received it from the learned Prelate, and whether the noble Earl had or had not previouſly conſented was of very little conſequence, as the motion of adjournment was regularly made, and the queſtion as regularly put upon it.

Duke of Richmond.

The Duke of *Richmond* ſaid a few words in reply: he was glad to hear ſo liberal a principle laid down as that of permitting noble Lords to withdraw their motions whenever they thought proper. He had been a witneſs to ſeveral inſtances of a contrary nature; he could not charge his memory whether they aroſe ſince the noble Lord preſided upon that woolſack, but he was certain there had been inſtances of a recent nature, where the mover had not been permitted to withdraw his motion. In future therefore, ſo far as the learned Lord's weight or influence might be ſuppoſed to extend, he was glad to hear that he ſhould have ſo powerful an advocate to aſſiſt him in aboliſhing a cuſtom, which in the learned Lord's opinion, was uncandid, if not indecent. But even though the general propoſition had been ſtrictly true, that it was uncandid and indecent to refuſe any noble Lord to withdraw his motion, it did not apply in the particular caſe, for as yet, he had not heard from the noble Earl himſelf that he wiſhed to withdraw it.

The queſtion was then repeated from the woolſack, and the Houſe adjourned till Monday.

April 9.

Private buſineſs. No debate.

April 10.

Private buſineſs. No debate.

April 11.

Several public and private bills this day received the royal assent by commission, after which the House adjourned till Tuesday fortnight, the 1st of May.

May 1.

This day the House met, pursuant t their adjournment before the recess.

Prayers being over, the House proceeded to dispose of several orders which stood on the Journals, and to receive such reports from the Lords' committees as had not before been passed the committee.

The order which stood for this day, for hearing counsel at the bar in respect of the rights of the several noble claimants to the office of Lord Great Chamberlain of England, was discharged, and the same ordered to be heard on Monday next, the 7th instant, of which all parties were desired to take notice.

The other customary business being finished, a petition was presented at the bar in behalf of a criminal convicted, and ordered for execution by the Court of Justiciary in Scotland, for a street robbery within the city of Edinburgh.

The contents of the petition were substantially as follows: That the petitioner, James Bywater, late a sailor aboard his Majesty's armed ship the Alfred, lying at Leith, and then a prisoner in the Tollbooth of Edinburgh, was apprehended on a charge of stopping a person the evening of such a day, and robbing him of a silver watch, four shillings and his hat, for which the said Bywater was, after full proof, ordered for execution on such a day in the Grass-Market, the usual place of execution. It farther stated, that the law of Scotland ordains, that a copy of the pannel, or the persons ordered to be summoned to serve on the jury shall be delivered to the prisoner so many days before his trial, but that the copy of said pannel, delivered to the prisoner, was not the same as that actually summoned, by which means he was deprived of the right of challenge, which rendered the whole proceedings had against him irregular, informal, and illegal; and finally praying, that their Lordship's would interpose their judicial authority, and prevent him from suffering contrary to law and justice.

Earl of *Mansfield*. The Earl of *Mansfield*, as soon as the petition was read, rose and delivered a most able and learned speech. He said, he

he would confine what he meant to submit to their Lordships consideration within as narrow a compass as the nature of the subject would admit; and, as it was a matter of some importance, so far as it concerned the general system of criminal jurisprudence in the northern part of this kingdom, he intreated their Lordship's attention for a few minutes.

His Lordship observed, that real justice would not be defeated, though the petitioner should suffer contrary to those distinctions, which the laws of all civilized countries had very wisely established for the furtherance of protecting the innocent and for punishing the guilty; he meant, where a mistake, or wrong or false pleading might affect the former as well as the latter. The present case did not however come recommended to their Lordships upon any such ground; the objection taken by the appellant in the present instance, being only a trifling misnomer, which defect had been cured by the appellant himself by his subsequent conduct.

The appellant came to their Lordships for relief upon this ground, and upon this only; that of a mere literal error, not applicable to himself in any sense, or which might or could affect him as an innocent man. It would be necessary to state briefly how the law of Scotland stood, in order to enable their Lordships the better to decide upon the merits of the petition.

By the laws of Scotland, if a person is libelled or accused of an offence, the proof of which may draw after it a capital punishment, he is intitled to a copy of the names of the persons summoned to try him, as is the case of persons charged with acts of high treason in England; and it is likewise required, that said copy shall be delivered to him so many days previous to his trial. If the culprit, when put upon his trial, should object to or challenge any of his jurors, the law says, another person shall be sworn in the place of the person so objected to or challenged. In the case of the petitioner, it happened that in the list of the pannel who were to try him, the name of Lothian, one of the jurors, was wrong spelt on the back of the libel or indictment, and the prisoner took no notice of it at the time. The juror when called to the book, was announced, and answered by his proper name (Lothian) and so the court proceeded to trial.

After conviction, when the misnomer was first discovered, the objection was taken and the matter of law argued before the Court of Justiciary, but over-ruled. This was clearly a brief state of the petitioner's case, who had now appealed

to their Lordſhips, on ſuppoſition that the miſnomer had proved fatal to the libel or indictment; but their Lordſhips would perceive, that although the objection had been much ſtronger, and the miſtake more material, the priſoner had waved his right of challenge, by not exerciſing it at the time; conſequently, though their Lordſhips were competent in their judicial capacity to entertain the appeal, it would not be fit to entertain it on the merits: but as he was of opinion that no ſuch appellate juriſdiction was veſted in that Houſe, from the ſupreme criminal court in Scotland, nor of courſe from any inferior one, he would beg leave to ſtate the reaſons which induced him to be of that opinion.

The queſtion in this point of view he took to be ſimply this:—Whether that Houſe was authorized by law or uſage to entertain and decide upon appeals fromthe deciſion of the criminal judicatures of Scotland?—This would lead him to the original right, as it might be now argued, if it had been for the firſt time the queſtion had been ſtarted; the other, what the uniform conduct of that Houſe had been in ſimilar caſes?

Their Lordſhips had frequently decided, and repeatedly determined, that they had no ſuch appellate juriſdiction, as he ſhould hereafter more fully explain, by reference to ſeveral inſtances in which ſuch appeals had been diſmiſſed; as to the other point, it would be proper to enquire into the ſtate of the criminal juriſdiction in Scotland, antecedent to the act of union, paſſed in the year 1706; becauſe whatever power of appeal was exerciſed by the Court of Parliament, or Houſe of Lords in Scotland, previous to that period, was juſt as much, and no more, as their Lordſhips were now competent to exerciſe. In civil caſes, the right of appeal to the Houſe of Lords in Scotland, was he believed coeval with the conſtitution; in criminal caſes, he took it to be exactly the reverſe. When the Parliament of Scotland was aboliſhed, or rather its repreſentative, deliberative, legiſlative, and judicial power incorporated into that of Great-Britain, the right of appeal in civil caſes devolved on the Britiſh Parliament; while on the other hand, the Scotch Peerage poſſeſſing no ſuch right, the criminal judicatures of Scotland ſtood preciſely after the Union as they had before. His Lordſhip here quoted a caſe or two in the reign of Charles II. of attempts being made by the Lords in Scotland to exerciſe ſuch a juriſdiction over the criminal courts of the kingdom, but obſerved that thoſe attempts had miſcarried.

After

After ftating his opinions pretty much at large, upon this part of his fubject, his Lordfhip proceeded to ftate fuch attempts as had been made by criminals convicted in Scotland to feek redrefs by appeal to that Houfe.

The firft which immediately came to his recollection, was founded upon the conviction of two perfons for murder, and was indeed accompanied with circumftances of a moft cruel and atrocious nature.

A lady of family and fortune [Ogilvie] had been inftigated either by her own wicked inclinations, or perfuaded by the feductive perfuafions of her brother-in-law, or hufband's brother [Lieutenant Patrick Ogilvie] in concert with him, actually perpetrated the horrid and unnatural murder her hufband.

The fact being difcovered, they were both tried, but being perfons of rank and affluence, they procured very able counfel, and were defended with all the powers of ingenuity and learning; the charge, however, was fo well made out, that they were both convicted, and fentenced to death; a fit punifhment for fo atrocious an offence! In bar of execution, the Lady pleaded pregnancy; which plea appearing to be well founded, fhe was refpited till after delivery; in the interim, it was fuggefted by fome of her friends, that by an appeal to that Houfe, and the exertion of intereft, fhe might obtain a pardon. The brother had before this been execcuted, never having thought of availing himfelf of fuch a falvo. The advice of the Scotch lawyers was taken by the lady's friends, and feveral of them gave their opinions, or rather differtations on the fubject, in which they difplayed great theoretical ingenuity. Having affumed fpeculative premifes that never exifted, they built a variety of arguments upon them, deducing conclufions that were extemely flattering to the cafe of their client. In order to ftrengthen their application to the King, (for the Houfe of Lords was not fitting at the time when the application for a revifal of the judgment of the court below was firft made) thefe differtations were lodged with his Majefty's fecretaries of ftate, together with a petitition, ftating, that the prifoner wifhed to appeal to the Houfe of Lords againft the fentence of the Court of Jufticiary of Edinburgh, and therefore prayed a reprieve till the Houfe fat. The fecretaries of ftate, from an extreme caution in a cafe of fuch nicety as a cafe of life and death, on this application fent down a reprieve, and before the Houfe fat, the matter was a good deal agitated, and the law books and

lawyers

lawyers of Scotland were consulted on the subject. He remembered the present Lord Justice Clerk was at that time Lord Advocate, and that he sent up as able, clear, and learned an opinion on the case, as ever was penned on any occasion; in that opinion, the Lord Advocate stated, that he had consulted the records of the Scotch Parliament, and submitted them to his brethren and the rest of the Judges of the Courts of Session, who had assisted him in examining every official document that was likely to throw a light upon the subject, without finding any one instance of an appeal in a criminal case. The Justice stated also that he had referred to an infinite number of law books, and had consulted the most learned of the profession, without being able to meet with one precedent for such an appeal as that attempted by the prisoner. When the Parliament met, the matter came forward, and it was upon discussion acknowledged on all hands, that this House was not a jurisdiction competent to receive such an appeal. The issue of the case was foreign to the point in consideration; but what he had stated was sufficient to mark the novelty of the application of 1768, the enquiries it gave rise to, and the result of those enquiries, which clearly shewed the sense of the Scotch bar, and of that House upon the subject at the time. The next case that occurred, was Duncan Campbell and the Earl of Eglington, in 1770. The grounds were, Campbell had shot the late Earl of Eglington, and the question was, whether there was any final appeal from the sentence of the Court of Justiciary or not? On this occasion the House acted conformably to their conduct on the former one. The case that followed this, was that of a member of Parliament, who was prosecuted on a charge of bribery, in the Court of Justiciary, in bar of which process he had pleaded privilege of Parliament, and upon the stay of proceedings the cause came before the House; but it was immediately seen, that privilege of Parliament was no plea to exempt the offender from prosecution for a crime, a member of Parliament being as amenable to the laws of his country on a criminal charge as a subject of any other description; the matter was sent back therefore to the Court of Justiciary, who were recommended to re-consider the nature of the prosecution. Another case mentioned by his Lordship, was that of the two sheep-stealers, in 1773, which was the last that had occurred, and had been referred to a committee and discussed a good deal, but the committee had expresly decided, that the House had no jurisdiction in cases of a criminal nature.

Exclusive

Exclusive of these cases, his Lordship added an infinite variety of arguments, grounded on facts, which he stated, to shew that the House was incompetent to entertain and decide upon appeals from the Court of Justiciary in Scotland. In particular, he stated a case that occurred in the year 1718, and which, for want of a proper distinction, and being rightly understood, had been thought by some to countenance the presumption that the House had the sort of jurisdiction now appealed to. At that time the magistrates of Elgin being inclined to shew favour to the clergy of the episcopalian profession, bestowed a chapel upon one of them, which chapel was claimed by the kirk, as belonging to it of right; and, in order to recover it, the kirk instituted a criminal prosecution; but the question upon which it was grounded, being altogether of a civil nature, viz. whether the chapel belonged to the kirk or to the magistrates? the trial was held before the Court of Session, and upon their interlocutors, the Court of Justiciary proceeded to adjudge, that the person possessing the chapel should deliver the key to the kirk, and pay a considerable fine. From the interlocutors of the Court of Session, the clergyman appealed to the House of Lords, and their Lordships reversed all that had been done by the courts in Scotland; but the order (which for the greater accuracy his Lordship said, he had referred to immediately previous to his rising to trouble the House on the subject) of their Lordships had been "to reverse the judgment of the Court of Session, and the proceedings had thereupon;" so that by the words, the proceedings had thereupon, it was clear the House did not think themselves warranted to interfere in a criminal case, but merely reversed the proceedings of the Court of Justiciary, because they were founded on the judgment of the Court of Session, which was a judgment on a civil question, and which they went back to in an especial manner. His Lordship also mentioned a case of an attainder of a young man who had been pardoned in this King's reign, but whose case was under consideration in 1754, when Lord Hardwicke was chancellor, and he was himself attorney-general, shewing that though the circumstances were of a peculiar nature, the House did not conceive itself competent to interfere. Among other arguments, he said, that where a power of jurisdiction was neither founded on the common nor on the statute law, it was to be looked for in usage, which in various instances made the law, but that on the present question, usage, was uniformly against the argument,

argument, that the House had a jurisdiction in cases of criminal appeal, and therefore it was impossible that the pretence should be founded. He farther added, that if the House had such a jurisdiction, it would be attended with manifest inconvenience, because as the House was not always sitting, the jurisdiction would be sometimes dormant, and at such times the law might be compleated, and a convict executed before he had any power of lodging an appeal. For these, and a variety of other reasons, his Lordship moved, that the petition be rejected — which, upon the question put, was ordered accordingly. — Adjourned to Thursday.

May 3.

Private business. No debate.

May 4.

Private business. No debate.

May 5.

Private business. No debate.—Adjourned to Monday.

May 7.

Private business. No debate.—Order made, upon motion, that the order of the day for taking into consideration the respective claims of the persons to the office of Great Chamberlain of England, which stood for that day be discharged; and that the same be heard on Wednesday next, the 9th instant.

May 8.

Private business. No debate.

May 9.

The order of the day being read for hearing counsel in behalf of the several claimants to the office of Lord Great Chamberlain of England; and it appearing that Lord Percy's (commonly called Earl Percy) claim, was founded in the most ancient pretensions, his Lordship's counsel, Messrs Kenyon, Howarth, and Scott, were desired to proceed in behalf of their client. Mr. Kenyon, as senior counsel, spoke first, of whose proceedings the following contains a brief abstract.

It was stated by him, that the office of Great Chamberlain of England was confirmed by King VIII. by patent, in the first year of his reign, to John the 13th Earl of Oxford and his heirs, who had been restored previously to his honours, dignities,

dignities, and estates, by act of parliament the first of Henry VII. and he accordingly exercised the office afterwards till his death; on the death of the said Earl it descended to his nephew and heir John the 14th Earl, an infant, the son of his brother Sir George de Vere, by hereditary right, as appears by a livery on the infant's coming of age in the 17th of Henry VIII. And the last mentioned Earl died seised of the same in the 18th of the same King.

It appears that the said last-mentioned Earl died without issue, and that John Nevill, afterward Lord Latymer, son of his sister Dorothy, Elizabeth his sister, wife of Sir Anthony Wingfield, knight, and Ursula his sister, wife of Edmund Knightley, esq. who was afterwards knighted, were his coheirs; to which John Nevill, Lord Latymer, the claimant Lord Percy his heir, being descended in a direct line from Catherine his eldest daughter, who married Henry, the 8th Earl of Northumberland, as appears by the pedigree annexed, the said John Lord Latymer having left no issue male: it therefore follows necessarily that Lord Percy is the heir of John the 14th Earl of Oxford, who died in 1526, seised of the office to him and his heirs, and is of course entitled to the same.

In 1625, 1 Charles I. on the death of Henry the 18th Earl, who died without issue, and who had exercised the office of Great Chamberlain of England, the honours and office were claimed by several persons, whose petitions were referred by the King to the House of Lords; and after many hearings thereupon, and the judges having delivered their unanimous opinion that the baronies were wholly in his Majesty's hand "to dispose at his own pleasure" (consequently in abeyance among the coheirs of John the 14th Earl of Oxford), and having also delivered their opinions on the other points of the case, the House thereupon offered unto his Majesty their opinion and advice, "That the title of the Earldom of Oxford might be declared by his Majesty to appertain to Robert de Vere, and that he might be accordingly established in that honour to him and to his heirs male; and that the said office of Great Chamberlain of England might be declared by his Majesty to appertain to the Lord Willoughby and his heirs, with a *salvo jure* to his Majesty." To these proceedings the petitioner's ancestor, the Earl of Northumberland, the heir general of the said John the 14th Earl, was not a party; he had been a close prisoner in the Tower from 1605 to 1621, and from that time to his death, in 1632,

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lived in the country in retirement; having never appeared but once in the House of Lords during that period, which was on the 1st of December, 1621.

The opinion of the Lords in 1625, that the office might be declared by his Majesty to belong to the Lord Willoughby of Eresby, as heir general to Henry Earl of Oxford, is a decisive proof that the office was considered to be descendible to heirs general: and if Lord Percy can prove, which he clearly can, that he is the heir general of John the 14th Earl of Oxford, no plea of length and possession can be opposed to his claim; for it can, it is presumed, be very satisfactorily shewn, that a claim to this office of dignity cannot be affected by the statute of limitations.

Since the reign of Henry I. only two instances have occurred in which the right to the office descended through a female; when the former of these happened in the time of Henry VIII. the office was usurped by the 15th Earl against the right. When the other took place in the reign of Charles I. the right thus descended was claimed and established; and it is somewhat extraordinary, that the 18th Earl of Oxford, from whom, in the second instance, the right was derived by descent through a female to the Lord Willoughby, had himself no title to that office, but what was founded upon an infringement of the principle of that very rule, which, in this case of Lord Willoughby, established that the office was descendible through females to heirs general.

Lady Willoughby of Eresby, when she contends that the office was included in the award made by Henry VIII. and thereby given to the heir male, impeaches the determination of the House, which put her ancestor in possession of it in 1625 as the heir general.

The claim of her Grace Charlotte Duchess dowager of Athol and Baroness Strange cannot interfere with Lord Percy's right, as her Grace's claim is founded on her being the heir general of the same ancestor as the Lady Willoughby claims under, who was only second cousin and heir male to John the 14th Earl of Oxford.

His Grace the Duke of Ancaster is the heir male of an ancestor who came into possession of the office as heir general against the claim of the heir male; and cannot possibly therefore, it is apprehended, prove any right to succeed to it.

It is for these reasons humbly hoped, that the office will be adjudged to belong to Lord Percy, as heir general of John

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the 14th Earl of Oxford, who died ſeiſed of the ſame in 1526, to him and his heirs.

As ſoon as Meſſrs Howarth and Kenyon had finiſhed their arguments, Mr. *Maddocks* was heard, as ſenior counſel for the Ducheſs Dowager of Athol. The caſe made out was in ſubſtance as follows:

Her Grace was ſtated to be the lineal deſcendant and heir general of John the 16th Earl of Oxford. This John had one ſon, Edward the 17th Earl, and a daughter married to Lord Willoughby of Ereſby. Edward the 17th Earl married two wives, by the firſt he had Elizabeth Counteſs of Derby, and by the ſecond Henry the 18th Earl of Oxford, who died without iſſue, in the year 1625. Lady Derby had James, Lord Strange, who had one daughter married to John Marquis of Athol, father of John firſt Duke of Athol, father of James the ſecond Duke of Athol, lately deceaſed, who was father of the preſent Ducheſs of Athol.

On the death of Earl Henry in 1625, Robert the 19th Earl, ſecond couſin to the deceaſed Duke, who ſucceeded to the title of Oxford, claimed the office of Lord Great Chamberlain, contending that the office had been annexed to the title of Lord Willoughby of Ereſby, on the other hand claimed as their general to his deceaſed grand-father, John the 16th Earl, on the ground that he was next couſin of the whole blood to Henry the 18th Earl, lately deceaſed, and the reſpective claims being heard at the bar, three out of five judges were of opinion that the office did deſcend to the heir general; but previous to the delivering ſaid opinion her Grace's anceſtors, namely Elizabeth Counteſs of Derby, daughter to Edward the 17th Earl, and her huſband, William Earl of Derby, preſented a petition, and the petition was read; upon which the following queſtions were propounded to the conſideration of the judges.

Firſt, Whether the Earl of Oxford, who made the intail of the ſaid office of Lord Great Chamberlain, was at that time ſeiſed of ſaid office?

Secondly, Admitting that he was ſeiſed of it then, whether ſuch an office may be conveyed by the way of limiting uſes?

The judges not agreeing, their opinions were delivered ſeriatem on March 31, 1626, and three out of the five were of opinion, that the office of Lord Great Chamberlain of England was come and deſcended unto the heir general of Henry the laſt Earl of Oxford.

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This decision in favour of the heir general decided nothing as to the Countess of Derby's title, which was then before the House, the question therefore between the anceſtor of Lady Priſcilla Burrel, who was deſcended from Lord Willoughby of Ereſby, became the ſubject of farther inquiry.

After the judges opinion had been delivered on the ſaid 31ſt day of March 1626, it was ordered, that the counſel in behalf of the Earl of Derby, and his Counteſs Elizabeth, be heard the next morning or afternoon, and the counſel being heard on ſaid day, viz. on the 1ſt of April 1626, their Lordſhip's reſolved, that the office deſcended to Lord Willoughby [of Ereſby], as couſin and heir general to Henry the laſt Earl of Oxford.

In the Journals of the fith of the ſaid month and year, an abſtract of the whole proceedings is entered, and their Lordſhip's offer to his Majeſty their humble opinions and advice, that ſaid office of Lord Great Chamberlain, be declared by his Majeſty, to appertain to ſaid Lord Willoughby [of Ereſby] and his heirs with a *ſalvo jure* to his Majeſty.

The Dutcheſs of Athol's counſel contended, that the queſtion on which the judges firſt decided, and upon which too all the ſubſequent proceedings reſted, was merely confined to the two claimants before the Houſe when the queſtion was firſt framed, namely, between the then Earl of Oxford and Lord Willoughby of Ereſby, who was clearly heir general in preference to the Earl, was no more than a who very diſtant relation, whereas Lord Willoughby's mother was the daughter of John the ſixteenth Earl, was ſiſter to Edward the ſeventeenth Earl, to whom Robert the nineteenth Earl, the preſent claimant, was only collaterally related.

The only ground on which the judges could have framed their opinion, and the Houſe afterwards have agreed to and confirmed it, was, that the Counteſs of Derby being only the ſiſter of the half blood to Earl Henry, the eighteenth Earl, the perſon who died laſt ſeiſed of the office; whereas, Lord Willoughby was related, though more remotely, by the whole blood. It was ſtrongly urged by her Grace's counſel, that the half-blood is no bar to a claim of a preſent dignity, becauſe if it partakes of the nature of an honour deſcendible, as in the preſent caſe of a peerage, the ſucceſſion muſt be governed by the ſame rules; that is to ſay, if the honour was deſcindible to the heir general, which was the title under which Lord Willoughby of Ereſby claimed, that the Counteſs

Countess of Derby even in that light, was heir general to the first grantee; she was sister besides to Henry the last Earl, and heir general of John, the sixteenth Earl, under whom Lord Willoughby [of Eresby] derived his claim, with this difference too, that in each instance her competitor was one degree farther removed from the two successive Earls, who died seised of the honour, Edward and Henry.

If it was an estate in land, it was confessed, that the law would exclude the sister by the half-blood, by giving a preference to the cousin by the whole blood, but that it was presumed was not the point in issue, but whether, as in the case of a peerage, the heir general must claim under the first grantee, or under the person last seised; but it was humbly contended, that the only actual determination the House had ever come to, however extraordinary the conclusion might be, was, that in 1626, when both by the advice of the judges their Lordship's determined, that the honour descended to the heir general, though they misapplied the general principle to the particular case. It was a good bar to the then Earl of Oxford, who was not the heir general, and so far supported the claim of the Countess of Derby; but when the Earl of Oxford's claim to the Great Chamberlainship was set aside, the Countess of Derby was clearly heir general in respect of an honour, though her being of the half blood would have excluded her from taking any species of landed property by descent. The rule of inheritances was therefore unfitly applied to a claim of a title of honour, which is solely and exclusively descendible to the heir of the first grantee.

The office of Lord Great Chamberlain was a personal dignity, and held of the King by grand sergeantry. It differs from the law of landed descents in a great variety of instances. No fine of an honour can be levied, nor can an honour be alienated as in the case of landed property. A brother can never succeed, unless his name be inserted by way of remainder in the original grant. An honour, or the exercise of it cannot be divided, it must devolve, and of course be exercised by a single person. No length of time is a bar, as in the case of landed property. As an instance in point, personally applying to one of the competitors [Lady Eresby] the barony of Willoughby has been for a great length of time in abeyance, and has been only lately decided in favour of the present possessor. Their Lordship's Journals are full of proofs of this doctrine, and indeed, in some instances,

baronies

baronies have been claimed, and the claims have been granted after the honours had lain dormant for several centuries.

It was not meant to impeach the determination of the House of Lords in the year 1626, but it was fair to suggest, that their Lordship's were misled, and upon an unintentional mis-stating of the case, perhaps induced to misjudge the claim of the Earl and Countess of Derby, their noble client's ancestors, and so far from supposing that the present was an antiquated claim, suddenly revived at so great a distance of time, and totally given up in the year 1626, the fact was, that at the end of almost forty years, namely in 1661, petitions were presented by the Earls of Derby and Oxford, for a re-hearing of their respective claims, and upon the question, after receiving the petitions, whether the first petitioner's claim, the Earl of Oxford, should be confined to matter of error, the votes were equal.

The Duchess Dowager of Athol cannot pretend to say what motives induced her noble ancestor from urging the matter of error, which upon the carrying of the question he might, if he pleased, bring forward; but whatever the noble Earl's reasons were for declining to give himself any farther trouble, it could not affect her right, which being personal and inalienable in its nature, could not be prejudiced by any species of negligence, misconception, or positive act of any of her intermediate ancestors, unless in the case of forfeiture for felony or treason, which was not pretended.

The House adjourned at half past six o'clock; counsel ordered to attend at two o'clock to-morrow afternoon.

May 10.

Mr. *Erskine* followed Mr. Maddocks in support of the claim of the Duchess Dowager of Athol, and cited several cases out of law-books, particularlarly from Rastal's and Coke's Entries, to support the general proposition on which his client's case was maintained, "that honours were not governed by the rules of law, as in cases of landed descent;" and a passage in Coke Lyttleton, wherein it was clearly laid down, that an office of honour was impartible between copartners, but was sole and descindable, according to the nature of the grant made to the first grantee or ancestor, who possessed the honour or office, was cited.

Solicitor General.

The *Solicitor General* [Mr. Mansfield] was next heard on the part of Lady Priscilla Burrel, Baroness Willoughby of Eresby; and after stating her pedigree, that she was sister to the

the laſt Duke of Ancaſter, and lineally deſcended from Lady Willoughby, daughter to John the ſixteenth Earl of Oxford, and heir general to Henry the eighteenth Earl, who died ſeiſed of the office, and from Lord Willoughby, who ſucceeded to that office in 1626, and that the ſame had been regularly exerciſed by her anceſtors, thence downwards to the deceaſe of her late brother,---Mr. Solicitor proceeded to animadvert upon the caſes made out by the counſel for the two preceding claimants, Earl Percy and the Ducheſs Dowager of Athol.

He ſtated, that in the fifth year of the reign of King Henry I. Alberic de Vere (the ſecond of that name, whoſe ſon was created Earl of Oxford by King Henry II.) received a grant of this office, to hold to him and his heirs, as freely and honourably as Robert Mallett, or any other perſon before or after him, ever held the ſame, and with ſuch liveries and lodgings of his court as belonged to that office.

From this period the family of the Veres continued in the enjoyment thereof: but upon the acceſſion of King Henry VIII. John the thirteenth Earl of Oxford, received a confirmation of this office to him and his heirs, and exerciſed the ſame until his deceaſe; when it deſcended to his nephew and heir, John the fourteenth Earl of Oxford, who died ſeiſed thereof in the year 1527, leaving three ſiſters, his coheirs at law; and John the fifteenth Earl of Oxford, his ſecond couſin, and heir-male.

Upon the deceaſe of the fourteenth Earl of Oxford, a diſpute aroſe between his heirs male, and his coheirs and their huſbands, concerning the poſſeſſion and partition of the honours, offices, and other hereditaments, which he died ſeiſed of; and in order to decide ſuch differences, all parties ſubmitted their titles to the determination and award of King Henry VIII. who, in the 23d year of his reign, made his award and decree between the ſaid parties, and thereby beſtowed this office, amongſt others, with ſeveral other hereditaments, upon John the fifteenth Earl of Oxford, in fee; and gave ſeveral manors, meſſuages, lands, and hereditaments, other part of the eſtates of John the fourteenth Earl, to each of his coheirs general: and by an act of Parliament, paſſed in the ſame year, (after reciting in general terms that ſuch an award had been made) it was enacted, that the ſaid John, then Earl of Oxford, ſhould hold and enjoy to him, and his heirs for ever, all ſuch caſtles, lands, offices,

&c.

&c. and other hereditaments, which to the same Earl and his heirs, by the same award were decreed, with the usual saving clause of all right to all persons, except the therein before-mentioned John Nevyll, Anthony Wingfield, and dame Elizabeth his wife, Edmund Knyghteley, and Ursula his wife, and the heirs of the said John Nevyll, Elizabeth, and Ursula; and it was thereby also enacted, that the said John Nevyll, dame Wingfield, and Ursula Knyghteley, according to the purport of the said award, should enjoy all such manors, &c. which to them were decreed by the said award, in such manner as in the said act is particularly mentioned.

In consequence of this award, John the fifteenth Earl of Oxford enjoyed, and in the 31st year of King Henry VIII. died, seised of the office of Lord Great Chamberlain of England; and although it appears that his son John, the sixteenth Earl of Oxford, was interrupted in, and withheld from the enjoyment of this office, which was his undoubted inheritance, during the latter part of the reign of King Henry VIII. and the short reign of King Edward VI. yet he appears to have been restored to, and reinstated therein upon the accession of Queen Mary, and to have exercised the same at her coronation, and to have died seised thereof, in the fourth year of the reign of Queen Elizabeth; and upon his decease, his son Edward the seventeenth Earl of Oxford, inherited and enjoyed this office, and transmitted the same to his son Henry de Vere, the eighteenth Earl of Oxford, who died seised thereof in the year 1625, without issue; which occasioned the dispute between the heirs male and heirs general of the last named Earl, particularly mentioned in the foregoing case, which was finally decided in favour of the person from whom Lady Willoughby of Eresby is lineally descended.

In the case stated by Lord Percy (supposing his descent from Dorothy, wife of Lord Latimer, can be proved) his claim depends solely upon the before-mentioned confirmation of this office, to John the thirteenth Earl of Oxford, in fee, unaccompanied with any exercise or enjoyment of it, or any claim thereto by those from whom the noble Lord is descended, from the 18th year of the reign of Henry VIII. in the year 1527, down to this present time, a period of above two centuries and a half, and in direct opposition to the award of his Majesty, confirmed by act of Parliament, and acquiesced under by all the ancestors of Lord Percy.

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But as a full and complete answer to the claim now set up by Lord Percy, it is submitted to this honourable House, that the office of Lord Great Chamberlain of England, being an office with considerable fees and profits annexed to it, may be sued for and recovered by an assize, or other real action; that it falls within the description of hereditaments in the statute of limitations, passed in the 32d year of the reign of King Henry VIII. which might be pleaded in bar to any action brought by Lord Percy, for the recovery of it: and that your Lordships will not give any extraordinary countenance to a claim which has lain dormant for above two centuries an a half, and to which, if prosecuted in a court of law, there would be an unanswerable objection.

With respect to the claim of the Duchess Dowager of Athol; supposing the facts stated in support of it, as far as they relate to the dispute concerning this high office in 1625, to be true; the conclusion from those facts does by no means follow; nor does it appear that there was any error or mistake in the certificate of this honourable House to King Charles I. in the year 1625.

For as it is admitted by the Duchess Dowager of Athol, that the several titles of all the competitors in 1625 were before the House, and that the opinion of the majority of the judges, upon the contest between the heir-general and the heir-male of Henry, the eighteenth Earl of Oxford, was in favour of the heir-general; and that subsequent to the delivery of that opinion, viz. on the 1st of April, 1626, the council for the then Lord Willoughby and Lady Derby (both of whom claimed in the character of heir-general to the eighteenth Earl of Oxford) were heard before this House. It clearly follows, that the only possible dispute between the counsel for these parties; the only possible subject matter of debate for the House upon the arguments of these counsel, and the respective claims of the then competitors for this office must have been, whether the then Lord Willoughby or Lady Derby should be considered, upon that occasion, as heir-general of the then late Earl of Oxford; and whether the rules applicable to the descent of lands and other real property, or those which are confined to dignities and titles of nobility, should govern the decision of the question then before them. It is therefore insisted, on the grounds of said solemn determination, that this office descended to Lord Willoughby, as cousin and heir-general to Henry,

then last Earl of Oxford, without calling in, or requiring the assistance of the judges, is a clear decision of this honourable House, that the rules relative to real property, and not to titles of honour and nobility, are applicable to, and must govern the descent of this office; and that the certificate afterwards presented to his Majesty, (although there may be some inaccuracy in the expression) was perfectly consistent with the opinion of this honourable House upon the claims of the several parties, which had been fairly and fully discussed before them.

The House rose at six o'clock, and adjourned to the next day.

May 11.

As soon as the private business was finished, Mr. *Dunning*, as second counsel for Lady Eresby, resumed the adjourned pleadings of the preceding day, and proceeded to illustrate such part of the case and arguments as had been more slightly touched, or less insisted upon by his learned leader. He argued the matter with infinite ability and ingenuity; but as we have previously given the general outline which marked the leading features of this Lady's case, we forbear to pursue this learned advocate through the various distinctions and nice legal definitions which he displayed on this occasion.

Mr. *Macdonald*, counsel for the fourth claimant in this cause, the present Duke of Ancaster, informed their Lordships, that he would not trouble them at that time with a particular detail of the arguments and facts upon which his client grounded his expectation of being appointed to the high office then in litigation, as he understood it was the intention of the House to decide first concerning the merits of the claims made by Lord Percy and the Duchess of Athol, before they proceeded to an ultimate determination upon the general question, which of the parties were now by law entitled to exercise the office of Lord Great Chamberlain of England. He would therefore reserve himself till these other claims had been disposed of according to the pleasure of their Lordships.

Mr. Kenyon was next called upon to reply in behalf of the Duchess of Athol, as was Mr. Maddocks in behalf of Lord Percy.

Earl of Mansfield.

The counsel by order being withdrawn from the bar, the Earl of *Mansfield* rose and observed, that out of the four claimants

claimants who had made application to that House for their Lordships determination on the question, who possessed the legal rights to the office of Great Chamberlain of England, there were two who rested their pretentions on a different foundation from the rest, and were liable to different objections. These were, first, Lord Percy, who derived his claim from the circumstance of his being a direct and lineal descendant of Margaret, daughter of Sir George De Vere, next brother to John the 13th Earl, and sister to John De Vere the 14th Earl of Oxford, who succeeded to his uncle John the 13th Earl, who died without issue, both of whom died seised of the said office of Lord Great Chamberlain, a great many years before the place devolved to the possession of those subsequent Earls of Oxford, from whom the other claimants derived their respective claims, namely, John the 16th, Edward the 17th, and Henry the 18th Earls of Oxford. The noble Lady's case, which stood on the same ground so far as the question was to be considered as a question of mere law, was the Duchess Dowager of Athol. It is true she claims the right to the office from being descended from the same immediate stock as the Lady Willoughby of Eresby, and the present Duke of Ancaster, namely, being descended from the grantee, Edward the 17th Earl, whose eldest daughter was married to the Earl of Derby; whereas Lady Willoughby is more remotely related, being but descended from John the 16th Earl, yet there was one objection which applied in common to both cases which had been alluded to, and that was that they came within the letter of the statute of limitations. Upwards of 250 years had elapsed since the person died from whom Lord Percy claimed as the source of his pretensions; and 150 had passed away since the predecessor of the Duchess of Athol, from whom she at this time claimed, had asserted her pretensions. A leading question therefore for their Lordships to determine was, whether or no these cases came within the act of limitation, which confines the claim to be made and maintained by some legal process or suit at law sixty years from the year the supposed cause of action first accrued. To decide this question of law in the best manner possible, he would move that the opinion of the learned judges be taken upon it, and that before the merits of the general question underwent further discussion. By deciding upon this question in this stage of the business, the cause would be considerably relieved; for if the decree of the learned

 judges

judges should happen to turn out in favour of the opinion, that the two cases described within the statute of limitation, passed in the reign of Henry VIII. then they would be separated from the contention, and the claims would of course be considerably simplified. If the decree should be of a contrary kind, then their Lordships would be relieved from all ambiguity, upon a point that would constitute a leading feature in the decision they were to make. It had been suggested to him by a noble Lord, [Lord Radnor] that it would be necessary, in *ipso limine* of their investigation then before them, to put this question to the learned judges, whether or no the mode of urging the right to this office by a petition to the King was a proper mode or no? He should not have taken notice of this suggestion at that time, but for the respect he bore to the quarter from whence it originated. He would only observe, however, that this method of proceeding had been the prescriptive practice of ages. In all the succession, in all the contentions that had happened, no other mode of application had been recorded. In the determination which took place before the House of Lords, in the reign of Charles I. and was afterwards confirmed by the combined branches of the legislature, there were many of the first lawyers in the kingdom concerned, and there never was a period when there existed a greater number of able, honest, learned, ingenious counsel, than at that time; and the united opinion of each individual, however they might disagree in other parts, was in this instance exactly the same, having all concurred that a petition to the Crown was the proper mode of urging the claim to this office. It had always been conceived to be the proper mode ever since; but he should not have rested upon custom only, but would have taken the opinion of the judges in conformity to this intimation given to him by the noble Lord, had he remembered an instance where a question was referred to the opinion of the judges, which had not previously been argued at the bar of that House. None of the parties had thought it worth their while to urge any arguments on that point in the present instance, and therefore he did not conceive it to be agreeable to established usage to refer the question in the manner proposed for by the noble Earl. He had nothing farther to urge at that time than just to move their Lordships, that the following question should be referred to the opinion of the judges, namely, "Whether the right of Earl Percy, also the right of the Duchess Dowager of Athol, to the office of Lord Great Chamberlain,
supposing

fuppofing their pedigree and cafes to be as ftated by their counfel, are barred by the ftatute of limitations?"

This motion was about to be put, when the *Earl of Denbigh* rofe, and very unexpectedly ventured into a competition with the learned Lord who fpoke laft, concerning the regularity and neceffary *form* of their Lordfhips proceedings. He contended, that it was not competent to their Lordfhips to come to any feparate or diftinct decifion upon any of the refpective claufes till the parties were all heard. That was not the cafe in the prefent inftance, Lady Willoughby of Erefby, and her hufband, as well as the noble Duke her uncle, and her noble relation Lord Robert Bertie, had not been yet heard upon the merits of their refpective claims, confequently the fame not being before the Houfe, could not either legally or equitably be decided.

Earl of Denbigh.

Not a fyllable was offered in reply, but the motion already ftated was put and agreed to, and all the judges defired to attend that Houfe on Wednefday next, in order to give their opinion thereon.—Adjourned at feven o'clock to Monday.

May 14.

Private bufinefs. No debate.

May 15.

Nothing but private bufinefs. Notice given from the woolfack, that the judges defired farther time to confider of the queftion framed in the Houfe on Friday, relative to the claims of Earl Percy and the Duchefs Dowager of Athol, to the Great Chamberlainfhip of England, which had been referred to them by their Lordfhips for their opinion.

May 16.

Private bufinefs. No debate.

May 17.

Private bufinefs. No debate.

May 18.

As foon as the private bufinefs was over, the *Lord Chief Baron* (Skinner) being the only chief judge not a member of that Houfe, rofe to give the opinion of himfelf and his brethren, in anfwer to the queftion propounded to all the judges, on the refpective claims of Earl Percy, and the Duchefs Dowager

of

of Athol, respecting the office of Lord Great Chamberlain of England, namely:

"Whether the right of Earl Percy, also the Duchess Dowager of Athol, to the office of Lord Great Chamberlain, supposing their pedigree and cases to be as stated by their counsel, are barred by the statute of limitations?"

He observed, that the question he and his brethren were called to give an opinion upon, applied equally to both cases; to that of the noble Earl and to the Lady, because the they were both barred by the statute of limitations, or neither.

The statute he observed, was in the way of a remedial law, and was passed chiefly for promoting the quiet, ease, and security of the subject, and for defending the possessors of landed property, from the effect of dormant or remote claims, which it would be difficult if not impossible, however unjust or ill-founded, to meet or defeat in a court of justice, where the proof was put upon the possessor, to shew an indefeasible title. The numerous evils and endless litigations, which sprang from this defect in the common law, after property began to be alienated, and transferred from hand to hand, became so great a grievance, that in the 32d year of Henry VIII. the legislature found it necessary to pass a law which enacted, that any claim which was presumed to accrue for a longer period than sixty years, previous to bringing the writ of right, should be deemed a nullity in law, and an uninterrupted possession for that space of time deemed an effectual bar to all claims whatsoever. Upon this short view of the claims of Earl Percy, and the Duchess Dowager of Athol, it was clear that they had come within the letter of the statute, none of the noble Earl's ancestors having exercised the office of Great Chamberlain since the reign of Henry VIII. a period of about two hundred and fifty years; nor of the Duchess of Athol, the immediate family of Vere, under whom derived her claim since 1625, a period of upwards of one hundred and fifty years.

But it had been argued in both cases, very ingeniously at the bar; First, that the Great Chamberlainship was inalienable by the person intitled to hold it, nor could be disposed of or parted with, nor could it lapse or be transferred to another, by any gift, bequest, fine levied or come back to the original grantor, the King, but by forfeiture, for some crime working a corruption of blood.

Secondly, that it was not necessary to prove that his ancestor or the person under whom he derived his claim, had seisin no more than in a writ of dower, and in several other species of writs, where it was sufficient to state the passing of

the deed or record of the grant, without proving the actual seisin, thereby making out the title of the ancestor or other person under whom the party claimed.

Thirdly, the intrusion and subsequent possession, having been wrong, *ab initio*, no length of time or possession could establish a title in the wrong doer.

It was likewise argued, that the present was an hereditament, and not of course bound by the rules which directed landed descent; and lastly, that although the the statute of limitatations was a general law, affecting landed property, it was not understood to apply to the patrimony of the church, which was given as a gratuity or reward for personal service.

In answer to the first, that the office could not be alienated or divested out of the person seised, the fact seemed clearly otherwise, from the instances stated and acknowledged in all the cases; for the same had been rendered into the King's hands, and such surrender had hitherto remained unimpeached. In another instance, it had been annexed to the title, and part of the possessions of an Earl of Oxford, under an award of Henry VIII. and by the virture of an act of Parliament, which was in the nature of an agreement among the parties litigant, and made binding upon their successors; which agreement was acquiesced in by all the parties then in being for three generations.

The present claim, he observed, differed from writs of dower, and other writs of a similar nature, for it was sufficient to prove an endowment to establish the right, which was all that was left to the jury to try; whereas, to shew the right to an office, it was necessary to prove that the person last seised was intitled to exercise that office, which was not a matter in a variety of cases which could be determined by a jury, because it might possibly involve a question of law; or though the person described to have exercised the office might have been seised thereof, he might have been seised of the same, to the wrong and prejudice of another person; the fact of seisin was one thing, the right to that seisin formed another question; consequently, mere seisin was not deemed sufficient to establish a title; there needed no better proof than although the fifteenth Earl of Oxford was seised of the office, and exercised it, performing all the necessary functions, he deemed it farther necessary to have his title confirmed by Henry VIII.

It was urged at the bar, that the office of Great Chamberlain was an hereditament, and therefore must go to the male heir; or, in default of one, to the heir general. This was

a law doctrine, which when he heard it, he confessed much surprised him; he had ever learnt to hold the very contrary doctrine to be law; and had understood that hereditaments were alienable in the same manner as lands, and subject to all the rules of landed descent. He supposed by hereditaments was meant, all offices, franchises, duties, tolls, &c. called incorporeal hereditaments, in contradiction to profits, reserved rents, &c. growing or issuing from the soil. He believed it was enough to observe, that every day's experience proved the contrary; that all hereditaments of an incorporeal nature, when occasion required, were alienated, sold, or parted with, just in the same manner as landed property, unless the same was specially prohibited by some law, or confirmed by custom time immemorial. An argument had likewise been urged nearly allied to the latter, that the statute of limitations was not a general law, but left the common law in being at the time, just where it found it, except where the object of the statute was specially pointed out. Such, it was said, was the case respecting all ecclesiastical bodies and the clergy in general, upon whose claims the statute did not operate. The reason was clear, upon more accounts than one, because there was a law passed in the reign of Queen Elizabeth, to prevent alienations of the possessions of the church; whereas the law respecting the descent of lands, was calculated to encourage frequent changes, and transfers of that species of property. The patrimony of the church was besides in the nature of a corporate trust, for the benefit of the successors as well as the persons in possession; and the maxim in law, that no length of time can bar the claims of the church, is a maxim founded in wisdom and sound policy; because it is a perpetual preventative to those who might be otherwise tempted to enter into fraudulent agreements with those in possession, to the damage and injury of all their future successors; as the person who should part with a valuable consideration, would be liable to be called in queston at any future period, however distant.

For these reasons, and several others of a collateral nature, he informed their Lordships, that the judges were unanimously of opinion, that the claims of Earl Percy and the Duchess Dowager of Athol are barred by the statute of limitations.

Notice was then given to Lady Willoughby of Eresby and the Duke of Ancaster's counsel to proceed in making out their cases, as stated in the petitions presented to that House. The House adjourned to Monday.

May 21.

As soon as prayers were over, Mr. Solicitor General, as counsel for Lady Willoughby of Eresby, in support of her claim to the office of Lord Great Chamberlain of England by deputy, against that of her uncle, the present Duke of Ancaster, opened very fully his noble client's case. We shall pass over such parts of it as have been already stated in the foregoing pleadings, and merely confine ourselves to those points which applied particularly to that part of her noble competitor's.

Solicitor General.

Mr. *Solicitor General* proceeded to state, that in consequence of the before-mentioned resolution of the House of Peers, in the year 1626, and from that time to the decease of Robert late Duke of Ancaster and Kesteven, in the month of July last (a period of above one hundred and fifty years) this high office had been enjoyed without any interruption by Robert Lord Willoughby and his descendants, in a lineal succession, from father to son: for upon the decease of Robert Lord Willoughby (who was created Earl of Lindsey, in the second year of King Charles I. and killed at the battle of Edge-Hill on the 23d of October, 1642,) he was succeeded in all his titles and honours by his eldest son Mountagu, the second Earl of Lindsey, who was summoned to Parliament in his father's life-time, in the fifteenth year of King Charles I. and continuing firmly attached to the King, had not, during the remainder of his unfortunate reign, and the subsequent interregnum, any opportunity of exercising his office: but at the restoration of King Charles II. the said Mountagu, Earl of Lindsey, exhibited his claim to this great hereditary office, and upon his Majesty's coronation was admitted to the exercise thereof, and continued to enjoy the same until his decease in July, 1666.

Upon the death of the said Earl Mountagu, all his titles and honours, and amongst others, this hereditary office, descended upon, and were enjoyed by his eldest son Robert, the third Earl of Lindsey, until the month of May, 1701, when he died, leaving Robert, the fourth Earl of Lindsey, his eldest son and heir; who in his father's life-time, in April 1690, had been summoned to, and sat in Parliament as Lord Willoughby of Eresby; and on his father's death succeeded to the Earldom of Lindsey, and the hereditary office of Lord Great Chamberlain of England; and was afterwards, in the year 1706, created Marquis of Lindsey,

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and in the year 1715, Duke of Ancaster and Kesteven; and continued in the enjoyment of this office until his decease, in July 1723; when all his titles and honours descended upon his eldest son Peregrine, the second Duke of Ancaster and Kesteven, who was likewise in the life-time of his father, when Marquis of Lindsey, summoned to Parliament in the month of March, 1714, as Lord Willoughby of Eresby, and after his father's death continued in the exercise and enjoyment of this hereditary office, until January 1741, when he died: upon his death his eldest son Peregrine, the third Duke of Ancaster and Kesteven, succeeded to the said Dukedom, and all the other titles and honours that his ancestors had been in possession of, and among others, to this office, which he exercised and enjoyed until the 12th of August, 1778, when he died, leaving Robert, the late Duke of Ancaster and Kesteven, his only son, who thereupon inherited and succeeded to all the titles and honours that the last mentioned Duke Peregrine died seised of, and amongst others, to the hereditary office of Lord Great Chamberlain of England, which he exercised and continued seised of until the time of his decease.

After stating the descent down to Lady Willoughby of Eresby, he observed, that she was married to Peter Burrell, esq. one of the petitioner's in the present case, and that the said Lady, with her sister Lady Georgina, were sisters and co-heirs to Robert the fourth Duke, who died without issue; that the office in question had devolved on Lady Willoughby of Eresby, as eldest co-heir, and that in her right the said Mr. Burrell is intitled to execute the office of Lord Great Chamberlain, because it is an hereditary office in gross, held in grand serjeantry, which in the case of co-heirs always descends upon the eldest, and is to be executed by the husband, which was warranted by usage, as appears from the authority of several cases herein after stated.

The office of Steward of England was the inheritance of Hugh de Grentemesnil, who held the honour of Hinckley by that service, and died leaving two daughters his co-heirs; Petronella (or Parnell) the eldest, married Robert Earl of Leicester, who in her right became seised of the office of Steward of England.

And in one other instance in the same noble family, this office descended upon the eldest co-heir, and was executed by her husband, for the last mentioned Robert Earl of Leicester died, leaving issue by his said wife one son, firnamed

Fitz Parnell, and two daughters Amicia and Margery. In the year 1204, Robert Fitz Parnel died without issue, leaving his sisters co-heirs, the eldest of whom (Amicia) being married to Simon de Montford, he, in her right, became seised of the honor of Hinckley and office of Steward of England.

After the decease of Walter, who was constable of England in the reign of King Henry I. Milo Fitz Walter, his son (who for his services to the Empress Maud, was by her created Earl of Hereford) enjoyed the last mentioned office, and died in the year 1144, leaving five sons and three daughters, Margery, Bertie and Lucie; the five sons successively enjoyed this office, and died without issue, and upon the decease of the survivor of them, the office of Constable of England came to Humphry de Bohun, by his marriage with Margery, the eldest daughter of Milo Fitz Walter.

This office also descended a second time upon the eldest coheir, and was executed by her husband, for after it had been introduced into the last mentioned family, in the manner herein before stated, it was enjoyed by the descendants of Humphry de Bohun for several generations, in a lineal male succession, until the forty-sixth of Edward III. when the male line of this family failed by the death of Humphry, the then Earl of Hereford, and Constable of England, leaving issue only two daughters, Eleanor and Mary, his coheirs, between whom the great inheritance of this family was divided.

Eleanor, the eldest daughter, married Thomas of Woodstock, (son to King Edward III.) afterwards Duke of Gloucester; the second married Henry Earl of Derby, afterwards King Henry IV. Upon the marriage of the eldest daughter in the fiftieth year of the reign of Edward III. the office of Constable of Eng'and was granted to her husband by letters patent, but the letters patent recite the office to be in the King's hands, by reason of the minority of the heirs of the Earl of Hereford, and granted to hold during the King's pleasure, and so long as the said office should remain in the King's hand's from the cause aforesaid. Three years afterwards, viz. in the third year of Richard II. the eldest daughter having attained her age of twenty-one years had livery of her lands, and thereby the former letters patent were determined, but her husband continued to be Constable of England to his death in the twentieth year of Richard II. without any new grant, and therefore in her right.

The office of Champion of England, which is of the same tenure with the two great offices aforesaid, having descended

to an heir female, appears to have been executed at the coronation of King Richard II. by John Dymock, in right of his wife.

In the third year of the reign of King Henry III. William Marshall, Earl of Pembroke, died seised in fee of the office of Marshal of England, leaving five sons and five daughters; all the said sons successively enjoyed the said Earldom and office, and died without issue, and upon the death of the survivor of these sons, in the thirtieth of Henry III. Maud, who was the eldest of these daughters, and the widow of Hugh Bigod, Earl of Norfolk, claimed the office of Marshal, as the eldest inheritrix, of the person last seised thereof, and her claim was allowed, and the Marshal's rod delivered to her, which, with the King's licence, she gave to her son, Roger Bigod, then Earl of Norfolk, who did homage for the same. This appears by a writ directed to the treasurer and Barons of the Exchequer, commanding them to admit Roger Bigod Earl of Norfolk, to the Marshal's seat in the Exchequer, and the writ recites, that Matilda, Countess of Norfolk, had, with the King's licence, appointed the said Earl to the office: " *Quæ Matilda* (it is said) habet *Esnciam Hæreditatis Walteri Marescalli et cui Rex ea ratione comiserat Virgam Marescalciæ.*"

The claim of the present Duke of Ancaster and Lord Robert Bertie to the office has been rested upon three different grounds:

In the first place it has been urged, that by an implied construction of the act of precedence, passed in the first year of King George I. this office is annexed to the honour and dukedom of Ancaster, and therefore must be enjoyed by the person who is intitled to that honour and dukedom. ——In answer to this it is insisted, that this act of Parliament related merely to the regulation of the precedency of Robert then Marquis of Lindsey, and those who might then after be Dukes of Ancaster, and Great Chamberlains of England, and to prevent them from taking place before other peers of equal rank, which under the statute of precedency passed in the reign of Henry VIII. they would otherwise have been intitled to do, and that this private Act of Parliament in the reign of king George I. neither gave or took away any title to this office, which existed antecedent to that act of Parliament.

The second argument in favour of the present Duke of Ancaster and Lord Robert Bertie is, that the present Duke is the immediate heir male descended from the line of the Veres, Earls of Oxford, and as such intitled to this office.—But in answer to this it is contended, that the present Duke

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of Ancaster cannot, with any propriety, be called the heir male of the Veres, Earls of Oxford, having descended from a female branch of that family, that is to say, Mary, sister of Edward Earl of Oxford; and still farther it is insisted on the behalf of Mr. Burrell, and Lady Willoughby of Eresby, that upon a case so solemnly argued and thoroughly considered, as that was in the year 1626, respecting this office, the decision there in favour of the heir general in preference to the title of the heir male of the Earl Henry, is an express and positive authority in favour of the last mentioned claimants, and a direct bar to the present Duke of Ancaster's claim in the character of heir male of the Oxford family, and that the authority of this decision receives additional weight from the conduct of the House of Peers upon the subsequent petition in 1661, and the length of time during which this high office has been enjoyed by those claiming under the heir general of Henry Earl of Oxford.

The third argument in favour of the present Duke (or rather in favour of the right of his Majesty to grant this office), is, that this office cannot be held by a female.

But in the present instance it is not contended that this office can be executed by a female, but that in the event which has happened, the office descends upon Lady Willoughby of Eresby, as the eldest co-heir of the last Duke of Ancaster, and that her husband is intiled to execute the same. And this claim is well warranted not only from the authority of the several cases herein before-mentioned, but also by the opinion of all the judges in the sixth year of King Henry VIII. upon a case stated to them relative to the claim of the Duke of Buckingham to the office of Constable of England, by descent from the eldest of the two co-heirs of the Earl of Hereford.

It hath also been alledged, that this office cannot be executed by any person under the degree of a Lord of Parliament, and that no instance can be produced of any person of an inferior degree having been in the possession of it.——In answer to this it is to be observed, that as this office was granted many centuries ago to the family of the Veres, who were soon afterwards created Earls of Oxford, and continued for many generations in the enjoyment of this office, it is not to be expected that many instances should occur of this office having been enjoyed by a commoner; but that however one such instance is to be met with, for it appears that in the first year of Henry IV. he granted this office

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to Sir Thomas de Erpingham, who by virtue of this grant claimed to execute the same at the coronation of King Henry IV. and that this claim was allowed, and Sir Thomas de Erpingham executed the same accordingly; which precedent is sufficient to shew, that some of the most honourable and important parts of the service of this office may be executed by a commoner.—That Lady Willoughby of Eresby, being lineally descended from, and one of the coheirs general of Robert Lord Willoughby, who in the year 1626, was admitted to this high office as the heir general of Henry then late Earl of Oxford; the said claimants, Peter Burrell and Lady Willoughby, of Eresby, his wife, hope this honourable House will be fully satisfied of this justice of their several claims to the office of Lord Great Chamberlain of England, and the liberties and dignities thereof.

Mr. *Dunning* followed Mr. Solicitor General, and in a very able, but short speech, observed, that no argument could be set up against the present claimants, that of Lady Eresby, to the possession and profits of the office, and of Mr. Burrell, to the exercising of the same in right of his wife, which did not virtually defeat the title of the two other noble petitioners, the present Duke of Ancaster and Lord Robert Bertie; but that matter having been already decided by their Lordships, by the excluding the male heirs of the family of the Vere, in the person of Earl Percy, and the claim of the Duchess Dowager of Athol, as the next in lineal descent from Edward the 17th Earl of Oxford, he expected that the noble petitioners to whom he had last alluded, would perceive that they had not a foot of ground to stand upon, because every reason which supported their case, went in fact to the defeating the title of the whole family of Bertie; the descent passed through a female, the first Lady Eresby, sister to John the 16th Earl of Oxford, who made out his title as heir general to Henry the 18th Earl of Oxford. It was therefore absurd, in his opinion, to rest a title on the claim of being the heir male of the family of Vere, when in fact, the first Earl of Lindsey, the common ancestor of all the noble claimants, was preferred by a solemn opinion of the judges, and established by a determination of that House in the year 1626, to the 19th Earl of Oxford, who was the lineal male descendant, whose name was Vere, and descended from the Veres, Earls of Oxford, who had been in possession of the office for upwards of four centuries with little or no interruption.

The only two objections, in his apprehension, which carried the least weight; were first, that it was incompetent for a woman

a woman to exercise the office, and whenever that happened to be the case, the King appointed a Lord Great Chamberlain for the time, till some person disqualified, by non-age, came of years to discharge the functions of the office in his own person, as a matter of right, and that since the creating of the office it had never been exercised by a commoner. To the first objection it was sufficient to answer, that the son, if of age, the husband, or next of kin, had been always appointed under this species of tenure; and to the second, that there was a case in point, which was that of Sir Thomas de Erpingham, in the reign of Henry IV. who exercised all the duties and privileges of that office in the most full and ample extent, for there could not, in his opinion, be a more extensive exercise of the plenitude of the Lord Great Chamberlain's power, than that of discharging the duties of that high office at a coronation, which was the fact, in the case so ably and accurately stated by his learned leader, in the reign of Henry IV.

After several arguments of a collateral nature, Mr. Dunning concluded, with expressing his most perfect confidence that their Lordships would think with him, that the office had devolved on his noble client, Lady Willoughby of Eresby; and, that agreeably to ancient usage, when the office descended upon a female, or an infant, that in the latter instance, with the pleasure and approbation of the King, the next of kin, or *prochain amy*, was appointed *pro tempore*, and in the event of the office, devolving upon a *feme covert*, her husband was appointed to act during the minority of the person next seised, or in case of no issue, till the office had by the death of his wife descended upon some other person.

Mr. *Macdonald*, after stating the pedigree of his two noble clients, the Duke of Ancaster, and his uncle Lord Robert Bertie, offered the following, among other arguments, in support of their respective claims.

It was incumbent upon him, he said, to prove, that a female heir is equally incapable of holding as she is of exercising the office, and that she cannot by her deputy or by any husband upon whom she may bestow hersef in marriage, legally claim a right to hold or to exercise this office, but merely by the pleasure of the King and by his special licence; and that in the present case, the right to appoint the Lord Great Chamberlain is vested in the King, until there be an heir capable of holding and exercising the office, and that the petitioner, the Duke of Ancaster, appears to be the fittest person in his family, by the gracious favour of his

Majesty

Majesty to hold and exercise such office under all the circumstances of this case.

If the supposed grant to Sir Thomas de Erpingham for life, ever existed, it would be found as well as all the other originals and inspeximus, or confirmatory grants of this high dignity. But it is admitted by the Attorney-General, that it does not appear that he held the office by a grant for life.

If by a grant of the crown is meant a emporary appointment, it is admitted, that under such an appointment Sir Thomas de Erpingham did execute the office of Great Chamberlain at the coronation of King Henry IV. and so the Lord Chief Justice Crew, in the year 1626, states the fact to be, that he for that time only was appointed by the King to do it; but that Sir Thomas de Erpingham, ever in fact held or exercised the whole of the office, or had any grant or appointment for so doing, is denied, and if this instance is insisted upon, such fact ought to be proved and satisfactorily made out. Two of the high duties of the office are specified in the act of Parliament, and in the execution of which the precedency is still left, viz. to attend the King in person, and to introduce Peers into the House of Lords, neither of which duties appear or are pretended to have been performed by Sir Thomas de Erpingham.

As to the other instance, in which he was so unfortunate to differ from the learned opinion of the Attorney-General, as expressed in his report, viz. the right of the eldest female heir to hold this high dignity and office, and to exercise it by her husband; it may be proper first to observe, that the case in 1626, does not decide any such point, it goes no farther than to decide the preference of the heir general, capable of holding and exercising the office, to that of the heir male opposed to it.

The present point therefore must depend upon the consideration of the nature of this high dignity and office.

It is a dignity and office of the highest personal trust and confidence; it is held of the royal person only.

Its principal duty is an attendance on the sacred person of the King, to bring his inmost garment, to apparel him in his royal robes and ornaments.

It is a meer personal dignity, fixed in the blood, and descendible to posterity as long as the heirs are capable of holding it.

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It is annexed to nothing local or real, and though it has a descendible quality, viz. to a capable heir, yet it has not all the qualities or properties of a fee-simple.

For it cannot be intailed by the owner, because that might change the grant.

It is unalienable by the owner, for the grantee cannot transfer the trust to another, without the assent of the grantor.

In the present instance, two of the specified disabilities occur, those of a female and infant heir.

The Attorney-General, in his report, inclines to think that there is no difference in this respect, between offices annexed to lands, manors, or honours, and a personal dignity or office, like the present, which is in gross.

And he admits that the offices of Constable, Steward, and Champion, are annexed to some honour, manor, or lands, as they undoubtedly are.

But it is apprehended that the legal difference is clear and manifest.

All lands and inheritances local, may be conveyed by way of use. But inheritances personal, which have no relation to lands or local hereditaments, cannot be conveyed by way of use---For if so, this great officer might be made and unmade at the pleasure of the grantee, and there would be two distinct confidences, the King's confidence and that of the cestui qui use.

Offices annexed to local inheritances, are rather in the light of services reserved instead of rent.

The inheritances would be forfeitable by non-performance of the services.

If the owners of such inheritances were incapable of performing the services, they must of necessity find and tender their deputy, to prevent a forfeiture.

The King would allow such deputy, if a proper one; if not, he would appoint one; but it is conceived that he could not seize the inheritance, though he disapproved of the deputy---there being no refusal of the service, but an offer and tender of it.

This is apprehended to be the case where such local inheritances descend to a female heir, or to coparceners. And it must be reasonably supposed, that the husband of such female, or of the eldest coparcener, would be the properest person to perform the services, as being more interested than a mere deputy, to attend the due performance of them; and if the

other coparceners had husbands, as one could only execute the office, it is fit, that one should be the eldest.

But it is conceived that the profits of the lands, manors, or honours, to which such offices were annexed, would belong to the coparceners.

This doctrine appears in the case of the Duke of Buckingham, quoted by Mr. Attorney General, and mentioned in Dyer's Reports, 285, b. Plow. 39. but more fully in Keilway's Reports, 170, 171.

Humphrey de Bohun, late Earl of Hereford, held the manors of Harlefield, Newnam, and Whytenhurst, in the county of Gloucester, of the King, by the service of being Constable of England, and had issue two daughters, and died seised; they entered into the manors, and took husbands. The husband of the youngest was afterwards King of England, and partition was made, and the King and his Queen took the manor of Whytenhurst for their part, and the other two manors were allotted to the other husband and his wife:—Three questions were made:

First, If the reservation of this tenure was good; that is, whether this office was or could be reserved upon the feoffment or not? and the Judges held that the office might be reserved, and that the reservation of the tenure was good.

Secondly, When the manors were descended to the wives, how they could execute the office? and the Judges seemed clear, that they might make their sufficient deputy to exercise the office for them. So this question and answer are stated in Keilway's Reports.—In Dyer's Reports thus:

How the daughters before marriage could execute the office?

It was clearly resolved that they might make their sufficient deputy to execute it for them, and after the marriage the husband of the eldest might execute it solely.

But it was clear, that the profits of the manors belonged to them equally, and making but one heir, the husband of the eldest would properly be deemed to have the preference of executing the office solely; and as both of the husbands could not be the officer, but one of them only, it was more fit that it should be exercised by the husband of the eldest. This is conformable to the general law of coparceners in matters not divisible, and where there is nothing for contribution or allowance to the younger, viz. the eldest to have the first presentation to a living, the first draught of fish in a fishery, and the enjoyment of a common; the eldest to have it first,

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for one portion of time, and then the youngest for the same time afterwards.

But the third question in the Duke of Buckingham's case shews it to be in no way in point to the present case.

The third question was more difficult, says the Report of Dyer; the Report of Keilway calls it the more diffuse question; and it came to be so diffuse that the sight of the question is at last lost.—Viz. Whether by the unity of parcel of the tenancy in the King, the office was determined, or it should have its existence and continuance in the other coparcener. It was resolved clearly, says the Report of Dyer, that it should have its continuance in the other, for otherwise they would have the two manors, without doing any service for them; and they are compelled at the pleasure of the King to exercise the office; and the King may refuse it at his election and pleasure; as well as a common Lord of a seignory may refuse the receipt of homage of his tenant, if it be not homage ancestrel.

By this it clearly appears to have been an office annexed to the manors, or more properly, a service reserved for them instead of rent.

The office of Champion of England, in the Dymock family, is a service reserved upon the grant of lands, and is subject to the same observations as the offices of Constable and Steward.

The last case quoted by Mr. Attorney-General, of the Marshal of England, is supposed to be directly in point, as being an office in gross, and not annexed or tied to any lands or local inheritance.

But this seems to be a mistake, for it appears by a record, still preserved in the Exchequer, of the presentment of jurors at assizes held at Windsor, in Berkshire, before the King's Justices itinerant, in the twelfth year of Edward I. as to the tenure of certain lands within the hundred of Kentbury, in Berkshire, that the same Roger Bigod, Earl of Norfolk and Marshal of England, held *XX libratas terræ*, by the service and serjeanty of Marshal in Hamstede. *Librata terræ* is said by some to contain four oxgangs of land, which would make in the whole, fourscore oxgangs of land; or as some say, *librata terræ* means land of the yearly value of twenty shillings of lawful money, which would be twenty pounds of the money in those days.

Note, That the Earl Marshal was created about a century afterwards by Richard II. who created Thomas Mowbray, Earl of Nottingham, the first Earl Marshal.

It does not appear therefore, that there is any precedent in point, to the present case. But it should seem that this dignity of office of Lord Great Chamberlain, being held of the King's person, as king only, and not annexed to any honour, manor, land or local inheritance whatever, is as much a personal dignity as the Earldom of Oxford, which it so long accompanied, though wholly independent of it.

If his Majesty should grant it to the petitioners until Lady Willoughby of Eresby, or Lady Georgina Charlotte Bertie, should have issue capable of holding and exercising it, the intention of the original grant would probably be best answered, and such a grant seems to be most consistent with the dignity of the office.

Mr. *Davenport* displayed a great deal of law learning on the occasion, and contended, that their Lordships could not safely come to a determination till the nature of the tenure had been defined agreeably to the rules of common law; otherwise it would leave room for endless litigations in future times, should their Lordships come to a vote, on a question, so much clouded in doubt and obscurity. On the other hand, as the arguments of counsel in support of the Lady's claim, one time described the honour as descendible to the heir general; the next, as not fit to be exercised by a female; again, it was partible; and as soon as it suited their convenience, they contended it was sole, and could not be divided. Such being the case, as it struck him, he wished most sincerely, as well for the sake of his noble claimants, as from a desire of strict justice, that the nature and conditions of the tenure were previously defined by their Lordships; and then the parties before the House and their counsel, would know how to conduct themselves, and be able to discriminate between the loose opinions hazarded on both sides, and arguments framed on the solid and unerring rules of law in such cases.

Earl *Mansfield*.

The counsel being ordered to withdraw, the Earl of *Mansfield* rose, and after observing, that the pleadings were finally closed, said, he had taken some pains in the precedent stage of this important cause, and was happy to recollect that he had a hand in shortening the business, which otherwise must have been extended to a very great length; for so long as the four parties were before the House, each of them would have had a right to reply to the other, and by that means the cause might have been undecided several weeks longer. He hoped that there was another good consequence, that was simplifying the question, and taking the opinion of their

Lordships

Lordships on the point of mere positive law, whether Earl Percy and the Duchess Dowager of Athol were barred by the statute of limitations. The Judges were of opinion that the claimants were barred by said statute. Their Lordships therefore had nothing to distract or divert their attention, the only question they were called upon to decide, being simply which of the claimants, Lady Eresby of Willoughby, or the noble Duke who bears the title of Ancaster, were best intitled in the first instance to the office, or if not to the profits of the office, which of them, the noble Duke, or the Lady's husband, Mr. Burrell, were best intitled to be recommended by their Lordships to the King; pending a minority, or till the office shall devolve on some person who may unite the ability of exercising the office with the actual seisin or legal possession thereof.

After making some general observations, his Lordship acquainted the House, that he had framed a question after consulting some great living authorities, to be put to the Judges; which, with their Lordships permission, he would submit to their consideration.—A cry of read! read!

His Lordship then handed the motion to the woolsack, which was conceived in the following terms:

"The late Duke of Ancaster, having died seised of the office of Lord Great Chamberlain of England, leaving Lady Willoughby of Eresby, and Lady Charlotte Bertie, his sisters and co heiresses; does the said office belong to the eldest alone, or to both? or, in either case, is the husband of the eldest intitled to hold the said office? or may both sisters execute it by deputy? and how must such deputy be appointed? or does it devolve upon the King to name a proper person to execute the said office during the incapacity of the heirs?"

An order was then moved, that a note of said question be delivered to the Judges, and that they be desired to attend in their places in that House on Friday next, the 25th inst. to deliver their opinion thereon to the House.

May 22.

Private business. No debate.—Adjourned.

May 23.

Public business in course. No motion or debate.—Adjourned to Friday.

May 25.

The *Chief Baron.*

The *Chief Baron* after reading the question, framed by Lord Mansfield on Monday, and put by the House in due form, proceeded to take a very extensive view of the question in all its various aspects and relations. He stated the original of the tenure, the implied conditions of the grant, the duties of the office, and its destination, agreeably to the rules of the common law. Upon each of those points he was very full, and in the course of his argument, made it his particular business not only to answer the several arguments made use of at the bar, and stated in the petitioners respective cases, but with remarkable accuracy and precision, laid down the law in relation to descents, where the title of the next successor, nor of the person in possession, could not be affected by any act of either one or both parties. The tenure of Grand Serjeantry came within that description. It sprung from an agreement made between the Sovereign and the first grantee; and was binding reciprocally on their heirs or successors; so that while on one hand, nothing could defeat the grant of the person first seised, and his lawful successors, but an actual forfeiture arising from the commission of some crime, on the other, all those who were or might succeed him to the office, were bound to hold it in the manner prescribed by the grant.

He then stated the original grant, which he observed was made to a commoner, and traced down the succession to the office regularly to Henry the eighteenth Earl of Oxford, who was the last of that ancient family, who died seised. If any doubt could have remained in his mind, whether the heir general had a preference to the heir male, the determination of that House in the year 1626, in the case of the three claimants, Vere, the nineteenth Earl of Oxford; Lady Derby, heir general to the seventeenth Earl of Oxford, and Lord Willoughby of Eresby, who claimed as heir general to Henry the eighteenth Earl, the person who died last seised. Upon that occasion, after the most full and solemn hearing of all the parties, the Judges gave their opinion, that Lord Willoughby of Eresby, as heir general to the person last seised of the office, namely, Henry the eighteenth Earl of Oxford, that the office of Lord Great Chamberlain of England, did devolve on said Lord Willoughby of Eresby, as said heir general.

The determination of that day was formed precisely on the same rules of law, by which he and his brethren had formed their present opinion. It was formed on the nature of the tenure itself, and of the established rules of descent in cases of

of a ſimilar nature, as in the caſe of the High Conſtable, the Marſhal, and the Champion of England; in each of which it had been cuſtomary, from the earlieſt grants of thoſe offices, in caſe of failure of male iſſue in the perſon laſt ſeiſed, that the ſame ſhould devolve on the heir general.

The only two points between the parties now before their Lordſhips, the noble Duke, and the Lady and her huſband, Mr. Burrell, were; whether, when the office devolved upon a woman or an infant, his Majeſty might not appoint a perſon to fill the office till ſome perſon who might be legally ſeiſed thereof, ſhould be in a capacity to execute it? the other, whether any perſon under the degree of a Peer, could lawfully execute it?

Both thoſe objections were in his opinion eaſily anſwered. The eldeſt of the two Ladies upon whom the office had by right devolved, was married, and of courſe none was fitter than her huſband; and as to the ſecond, it was enough to obſerve, that the original grant was made to a Commoner, and that the office was exerciſed by Sir Thomas de Erpingham, in the reign of Henry IV. whom he preſumed acted at that King's coronation as deputy, but who certainly, from the Record, appeared to have aſſiſted as Great Chamberlain at the coronation of that prince.

After ſeveral other very learned arguments of the ſame tendency, he ſaid it was his duty now to deliver the ſentiments of his brethren, who were unanimouſly of opinion:

"That the office of Lord Great Chamberlain of England belongs to both the ſiſters of Robert, the late Duke of Ancaſter, who died ſeiſed of ſaid office.

"That the huſband of the eldeſt is not of right entitled to execute it.

"That both ſiſters may execute it by deputy, to be appointed by them, ſuch deputy not being of a degree inferior to a Knight, and to be approved of by the King."

Earl of *Mansfield.*

As ſoon as the Chief Baron had delivered the opinion of the Judges, the Earl of *Mansfield* roſe, and begged leave to trouble their Lordſhip's with a few words. He obſerved that the office was originally given by Henry I. to Aubrey de Vere, whoſe deſcendants, the Earls of Oxford, had enjoyed it until the time of Henry VIII. that then it had been given, in conſequence of a litigation, to the fifteenth Earl of Oxford, and had, after being in the poſſeſſion of various perſons, till it came into the immediate line of the Ancaſter family: that, on the death of the late Duke of Ancaſter, his ſiſters were

his

his co-heirs, and the eldest had applied by petition to his Majesty to be allowed to hold the office, and to appoint a deputy: three other claimants had started up to contest this right with her, and these were the Earl Percy, the Duchess Dowager of Athol, the present Duke of Ancaster, and his brother, Lord Robert Bertie; his Majesty had very properly referred their several claims to that House, for their advice in what manner he should dispose of the Chamberlain's staff; and upon a reference to the learned Judges, whether in the courts below, the claims of Earl Percy and the Duchess Dowager of Athol, would not be barred by the statute of limitation, they had delivered their opinions that they were barred; even if this had not been the case, there were other reasons which, in his mind, would operate powerfully against their claims to this office. Their Lordships would then come down to the case of Lady Willoughby and her sister, and consider what resolution they should adopt upon it. He for his own part coincided entirely with the learned Judges, in the general tenor of the report they had delivered, but was not quite made up in his opinion whether or no a Commoner of any degree could be legally deputed to the exercise of this employment. The only example which had been adduced of its ever being held by any person under the degree of a Peer, was in the instance of Sir Thomas Erpingham. It did not appear, however, from any specific description that was left upon record, that Sir Thomas could fairly be said to have ever held this office as principal at all. He had solicited leave of King Henry IV. to administer water to him upon his coronation; a request which was acquiesced in by his Majesty; and as this was one of the official duties of the Great Chamberlain, an inference had been drawn from this fact, that Sir Thomas must have been at that time in the actual possession of the employment itself. Fourteen years, however, after the period when he had executed this part of the Chamberlain's duty, an occasion arose to describe Sir Thomas with all his true titles and dignities, which description had been transmitted to posterity, and it mentioned him only as the Deputy Great Chamberlain of England. The effect of this single instance was of course destroyed, and the nature of the office was of that kind, the duties of it requiring the holder to accompany the King into that House, and to assume even precedency among their Lordships, that he was strongly disposed to think that the execution of it could not legally be deputed to any one below the rank of Baron.

That,

That, however, would in a considerable degree depend upon the will of his Majesty, whose approbation constituted a necessary essential in the appointment. His Lordship concluded with informing their Lordships that he would propose a motion to them, in reply to the message which had been sent to them by the King; which he said, would consist principally in recommending it to his Majesty to be directed by the opinion which had been delivered upon this subject by the learned Judges.

In the long course of descent, upwards of six hundred years, no instance had occurred in which the office had been claimed by females, except in the case of the Countess of Derby; but that case did not apply here, though the office had in some instances been transmitted by female descent; such being the case of Lord Willoughby of Eresby, son to Lady Willoughby, the first of the Bertie family (who was seised of the office) which Lady Eresby claimed as heir general to her cousin, Henry the eighteenth Earl of Oxford, the last of the Vere family who possessed the office. The only difficulty which now struck him therefore was, how the office could be executed? It certainly could not be executed by a woman, much less by two. The Ladies were consequently to appoint a deputy. It had hitherto been executed by a Peer, except in the single instance of Sir Thomas de Erpingham, and the first grantee, who was certainly of no higher rank than a Commoner; but neither of those precedents came up fully to the point. In a question therefore, which was not clearly or satisfactorily supported by precedent, so as to establish the rule clearly and unequivocally, he presumed it would be more prudent for their Lordships to draw up an address to his Majesty, stating their approbation of the opinion of the Judges, and submitting to his Majesty's wisdom, in what manner, and by whom, said office was to be executed.

A report was drawn in pursuance of his Lordship's motion, nearly in the same terms of the Judges opinion. Agreed to, and ordered to be presented to his Majesty. The House adjourned to Monday the 28.

May 28.

Private business. No debate.

May 29.

Public business in course. No debate.

As ſoon as the private buſineſs was over, the order of the day being read, for committing the foul-ſalt bill, Lord

Ld. *Dudley.*

Dudley begged leave to ſubmit to the Houſe a few words which he had to ſay on that ſubject. He then in a ſhort ſpeech animadverted on the great importance of the bill then before the Houſe, and viewing it in that light, thought it would be proper to poſtpone the committing until the firſt Tueſday after the receſs, that their Lordſhips might have full time to conſider the nature of the intended act. His Lordſhip ſaid, it was very poſſible he might be deceived as well in the opinion he had formed as the information he had received, in reſpect to the probable future effects of the bill: He was, however, certain that an immenſe ſum of money at preſent went out of the kingdom to Spain for that article which the preſent bill was ſpecially calculated to keep within the kingdom. It was therefore his wiſh, that their Lordſhips ſhould fully conſider the matter, and for that purpoſe he moved, that the bill be committed for the firſt Tueſday after the receſs.

Earl *Fe[rrers]*

Earl *Ferrers* oppoſed the principle of the bill, which he ſaid was a mere ideal ſcheme of benefit to the kingdom, with a certainty, in his opinion, of doing an injury to the public. He ſaid that he ſpoke from experience in the buſineſs; and he was confident, neither the bill before their Lordſhips, nor one of a ſimilar nature, now under conſideration in the other Houſe, could in any meaſure ſerve the nation. They might, indeed, do a benefit to ſome individuals; and, the noble Lord ſaid, that he was himſelf one of thoſe individuals. His Lordſhip therefore moved, as an amendment to Lord Dudley's motion, that inſtead of the words, firſt Tueſday after the receſs; it ſhould be inſerted, this day three months. The Houſe divided, and the contents went below the bar: among whom were Lord Stormont, and all the Biſhops preſent. For the amended motion 23; againſt it 14. Majority 9. The bill therefore was thrown out.

The ſecond order of the day was then read, for committing the bill for preventing the Profanation of the

Earl of *Abingdon*

Sabbath-Day, which brought up the Earl of *Abingdon*, who ſpoke to the following effect:

My Lords, the bill that is now under the contemplation of this Houſe, (the Sunday bill I think it is called) is, in my mind's eye, ſo truly ridiculous, at the ſame time it appears ſo very ſerious; it partakes ſo much of tragi-comedy; it ſo

ſtalks

ſtalks in buſkin, whi'ſt it ſkips in ſock, that really, my Lords, although a member of this Houſe, I know not what part to take; whether to be merry or grave, whether to be ſilent or ſpeak, and yet to play the mute upon ſuch an occaſion, were not only to play the fool with one's ſelf, but to encourage the folly of others.

For, my Lords, taking a view of this bill in its ridiculous light, what is the object? It is neither more nor leſs than this; to hinder people from walking and from talking on a Sunday night, not becauſe walking and talking on a Sunday night is at preſent unlawful, but becauſe walking and talking on a Sunday night muſt be made unlawful for the future; and this ſeems to be the whole object, ſcope, and tendency of the bill.

But now, my Lords, let us enquire a little into the grounds and foundation of this bill; and firſt as to the walking part of it, what is the caſe there? The caſe, as I underſtand it to be, is this.

Sunday being in this country, as in all other Chriſtian countries, the day of *otium cum dignitate*, the day of reſt, with the dignity that belongs to that reſt; the day when people waſh and clean themſelves, and, as the ſaying is, put on their Sunday's beſt; and there being in this metropolis ſome, who having ſo waſhed and cleaned themſelves, and put on their Sunday's beſt, are willing to enjoy this *otium cum dignitate*, not by walking *al freſco* on a Sunday evening, leſt their Sunday's beſt be ſpoiled by the rain, but under cover; not "all by the pale light of the moon," but by candle-light, when women and linen are ſaid to look beſt; I ſay this being the caſe, it has been therefore thought proper for the accommodation of this deſcription of perſons, that the large and elegant ſuite of apartments at Carliſle-Houſe, in Soho-ſquare, ſhould be opened on a Sunday evening, where the refreſhments of ices are provided to cool the hot, and tea, coffee, and chocolate, to warm the cold; for it is not pretended that any other refreſhments are to be had there; but walking being the *omne quod exit in um* of that place, the thing itſelf has, *euphoniæ gratia*, obtained the name of Promenade, and this I take to be the whole of the caſe with reſpect to the walking part of this bill, the whole of the charge, and the whole of the crime in the thing charged. But, my Lords, if there be, as it appears by this bill that there is, ſuch a degree of criminality in a Promenade on a Sunday evening, it is wonderful to me that this bill has

not extended its clauſes to the Promenades of St. James's Park, and of Kenſington Gardens; Promenades, where indeed the refreſhment of ices, and of coffee, tea, and chocolate, may not be had, but where other refreſhments are actually had, and eſpecially on a Sunday evening; ſuch as, for example, the refreſhment of repoſing one's ſelf on the lap of nature, inſomuch as to make viſible that tell tale line of the ſong, "Green was her gown upon the graſs." And as to the ſin of walking, there it is had in much greater exceſs than at Carliſle-Houſe, not to mention that there is leſs ſin in a ſin for being under cover, as at Carliſle-Houſe, than for being uncovered, as in St. James's Park and in Kenſington Gardens.

I muſt now wonder too, my Lords, that this bill has not gone a ſtep farther, and taken notice of a late erection in Pall-Mall; an erection, for the outward impurities of which, the newſpapers ſay, the erector (I think he calls himſelf Dr. Graham) has been already indicted, whilſt the inward impurities remain untouched.

But to this wonder I am aware of the arguments in anſwer. It will be ſaid, that this erection is not intended for uſe on a Sunday; and, as Milton tells us in his Comus, "It is day-light only that makes ſin," ſo in this bill we find that it is Sunday only that makes ſin; it is intended for the great, and not for the little; for the ariſtocracy, and not for the democracy: for us, my Lords, to generate heirs for the nobility, who cannot do ſo for themſelves; and for you, my Lords, the Biſhops too, as a paper which I have in my hand will ſhew; the paper, my Lords, is this:

TEMPLE of HYMEN.

Intelligence extraordinary,

A certain Biſhop has ſo completely exerciſed the celeſtial beds, that the evil ſpirits are expected to depart in a few days. The rooms will be fumigated with brimſtone, in order to the well receiving of the would-be celeſtial. The Doctor has wiſely opened his temple *vis-a-vis* to King's Place: that pure ſeminary is to ſerve as barracks for young recruits. Colonels Windſor, Matthews, and Adams, are to be made ſtaff-officers, and Carotty Kitty is to be drill-ſerjeant; they will learn their celeſtial exerciſe under the Doctor's own inſpection, and be cleanſed from all impurities! they will then be ready for the divine touch in his

heavenly

heavenly temple. N. B. A proper reinforcement of Irish chairmen are in pay to assist in case of emergencies.

Such, my Lords, are the operations of this Temple of Hymen, or, in other words, of this curious house of adultery: but in this there is no sin: for first, these operations are the operations of lying, in which there is no harm, and not of walking, in which there is; secondly, they are the performances of a week-day, and not of a Sunday; and thirdly, because we all well know, that what is a sin in the little, is not a sin in the great. As for instance, the Minister being a great man, may by his councils murder our once fellow-subjects in America; he may rob and plunder the State of its treasure, he may tear up the constitution by the roots. "But Brutus is an honourable man," and Brutus will have a dead majority, and being dead, a corrupt majority in both Houses of Parliament, to support these his honourable measures: whereas a little man, for walking under cover of a Sunday night instead of the open air, is, because a little man, to be put by the same dead and corrupt majority under the rigour and the lash of a penal statute, making that a crime, which in itself is innocence.

But now, my Lords, a word or two for the talking part of this bill, and what is the case here? Some men, pious men I may say, for aught is shewn to the contrary, fonder of talking than they are of walking, and not choosing to go to bed on a Sunday night without digesting, by reason what they had swallowed in the course of the day as a matter of faith, congregate themselves on a Sunday evening at a place, where paying six-pence a piece for admission, they empty their heads of their metaphysics, and fill their bellies with the value of their six-pence in porter and cheese. An harmless supper this would seem, and not likely to be very offensive in the digestion. But here again, my Lords, if the sin of talking, as of walking, consists in the day and not in the deed, what is the reason that this bill does not extend itself to the Sunday-night clubs about St. James's: as for instance, to Brookes's, where indeed I am not a member, but where, my Lords, as I am told, the members pay more than six-pence a piece for their supper; and as to talking, Lord, how they do talk! they talk bawdy, my Lords, and sometimes heterodoxy, but not blasphemy; no, not so bad as that neither; but they talk what is worse than all, they talk politics. They abuse the Minister at a great rate;

they

they say he has ruined the resources, and blasted the national honour of the country.

And shall these be suffered to talk against the state, whilst those are not permitted even to talk upon the affairs of the church! No, no, says the bill, be not mistaken. This is not our *ne plus ultra*, pass me into an act, give me the principle of the bill in a law, suffer me to put down the theologians this session of Parliament, and I will take care of the politicians the next. You shall hear of no more Westminster or other committees: no more associations: no more petitions: the state shall be as much out of the reach of enquiry as the church. The late edict of Russia, forbidding the Russians to talk over the affairs of the state, shall become, like this, an act of the English Parliament, forbidding Englishmen to talk about the affairs of the church; which leads me, my Lords, to take a view of this bill in its serious light; and as in its ridiculous light I might say, *risum teneatis amici?* I might add, "*Quis talia fando, temperet a lacrymis?*" For, my Lords, shall a free body possess a free mind? Shall not Englishmen be suffered to find his own way to heaven! Shall he not dispute? shall he not debate? shall he not debate? shall he not doubt of? shall he not comment upon that which is to be or not to be the means of his eternal salvation? How is fire to be drawn from the flint but by collision? And how is truth to be known but by discussion? Shall he not measure his faith of the trinity by the rule of his reason? And shall not a protester against the errors of the church of Rome, examine whether Protestantism or Popery is most congenial to the freedom of the state in which he lives? For these it seems are the theses against which the thunder of this bill is levied.

But it is said, the Universities are at the bottom of this bill; it was brought into the House of Commons by one of the representatives of one University, and seconded by another representative of the other; and therefore,

"What learning dictates reason must obey."

But, my Lords, this is no argument with me; for we all know, that to hold men in ignorance is sometimes the business of learning; and therefore, although I have the highest respect for the learning of the Universities, all is not gospel with me that comes from them; if it were, educated where I was in one of them, I ought to entertain principles very different from those I profess. With respect to one part of this bill, however, I mean the walking part of it, possibly

the Universities might have conceived it a fit object of regulation; for being devoted to the study of the dead languages, and not so conversant with the living, they might have supposed that the term Promenade meant something more than it really does, that it was the mere covering only of original sin; and therefore ought to be suppressed; but as to the talking part of the bill, in this they could not be mistaken. This came within the pale of their own knowledge; and here, my Lords, "*latetet anguis in herba*;" here it is that one sees the cloven foot peeping from under the cassock. Under the pretence of profanation, enquiry is to be stopped, and truth to be suppressed. The unlearned are not to examine, lest they become learned. Truth lies in a well, and the clergy are to be the only buckets to supply us therewith. This, so far as it goes, is the principle of this bill, a principle as subversive of religious, as it may be made instrumentally so of civil liberty; a principle as repugnant to the free constitution of this country as it is to the laws of our nature.

And, therefore, as Mr. Locke tells us, "No man is bound to obey the legislature, but according to the trust put in it." So, according to this just and fundamental principle of Mr. Locke, this bill should not pass into a law. No positive law can suppress the laws of nature; nor is any act of Parliament binding, which is to take from Englishmen the rights of Englishmen; that is to say, the rights of the constitution.

My Lords, I shall give my hearty negative to the bill, for the sake of its folly as well as its wickedness.

Bishop of *Chester*.

The Bishop of *Chester* got up, and said that the noble Lord's speech was so indecent and so very repugnant to the dignity of the House, that he thought it unworthy a reply. The learned Prelate observed, that he did intend, if any thing serious was advanced, to answer it, but in the present case, he left the noble Earl's arguments, if they could be called so, to their own demerits; for merits they had none.

Duke of *Manchester*.

The Duke of *Manchester* quoted a number of statutes, in which many penal laws were enacted to prevent the profanation of the Lord's day; statutes which, his Grace said, if put in force, would have answered every honest purpose of the present bill. His Grace spoke very seriously on its religious tendency, and seemed to think, that however high the authority of the pulpit might be held, yet mankind were never to be convinced of religious assertions without the benefit of reply

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was allowed, and that one neighbour had the liberty of conversing with another on the subject of that faith by which he was to be saved. His Grace farther observed, that although he was an enemy to dissipation and immorality, and although he never had been at the Promenade, yet he still considered both the places of religious debate, and of Sunday walking and drinking tea, perfectly innocent. He therefore wished, that the bill might be got rid of in as decent a manner as possible, and that another on a more liberal plan might be framed, to which he would give his most hearty concurrence.

The Bishop of Chester.

The Bishop of *Chester* said, that the noble Duke's speech demanded and was entitled to serious reply. He therefore informed their Lordships, that he apprehended the noble Duke to be mistaken in his idea respecting the nature of the bill: For it was only meant to prevent that irreligion which our Protestant ancestors abhorred, but the laws to effect which were found inadequate to the purpose. He said, that instead of this favouring of popish persecution it was levelled at popish customs; France, and other countries of the same religion, tolerated from the principles of that religion, plays, operas, and other pastimes on the Lord's-day. But the Protestant religion, founded on the Protestant constitution and our clearest rights, did not permit that profanation, and therefore every law to serve that purpose must be truly constitutional. The learned Prelate averred, that the places of public debate were supported not for the purpose of serving religion, but for the pecuniary advantage of the proprietors; and that the people who spoke there were paid a weekly stipend, for the purpose of drawing others to the house. This, he said, he averred from the best information; and that he had also the highest law-authorities, as well as information from the Justices, that there were not now any act in force, to prevent that profanation of the Lord's day, which the present bill meant to provide against.

The question was then put, whether the bill should be committed, and the House divided. Contents 29; non-contents 3. Majority 26.

The bill was ordered to be committed the first Tuesday after the recess.

The report on the bill, for making an exchange of lands between the Archbishop of Canterbury and the Earl of Radnor was received; and a motion being made that said report be now received, the *Lord Chancellor* came from the woolsack, and made a long and very able speech against agree-

The Lord Chancellor.

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ing with said report, in which he confined himself to two special points, the necessity of the most full and correct specification of the lands to be commuted or interchanged; and that the equivalents on both sides be such, as to satisfy the whole world, who might think fit to enquire, that what was received was equal to what was parted with.—This was necessary, in every bill, for a change or barter of property; but it became doubly so, when the patrimony of the Church was concerned; because, the person in possession, had but a life or transient estate in the property, which he changed.

He was well satisfied, in his own mind, that the most reverend Prelate, who was one of the contracting parties to the present proposed agreement, would be as careful and as anxious for the preservation of those interests committed to his care and guardianship as if the property was vested in himself, so as to enable him to devise, or otherwise dispose of the same; but it was the example, not the particular bill under consideration, which chiefly induced him to rise to oppose it:—because, it would establish a precedent, and a precedent the more dangerous, as it would have the sanction of the highest authority in the Church.

His Lordship next proceeded to descant upon the bill itself; pointing out in a variety of instances its defects, particularly that want of correctness, necessary where the value of landed property was to be fairly and equitably ascertained.

A short conversation arose between his Lordship, the most reverend Prelate, and the Earl of Radnor; which ended in a mutual agreement, that said bill be recommitted for the first day after the recess.

The House rose at seven o'clock, and adjourned to Tuesday sevennight, the 12th of June.

June 12.

This day the House met pursuant to their adjournment, previous to the Whitsun recess, and proceeded to the dispatch of business.

Counsel were called to the bar, to be heard in behalf of T. Fleming, esq. claiming the title of Earl of Wigton, in Scotland.

Several witnesses were called, to prove the facts stated by the petitioner's counsel. The evidence was to the following purport.

 That

That the late Earl of Wigton was a native of Ireland; but on the death of the preceding Earl he laid claim to the peerage, which was admitted; that, in consequence thereof, he assumed the title and arms, and was publicly received in both kingdoms as Earl of Wigton; that he walked at the coronation as a Peer of Scotland, and had a stipend from Government, to enable him to support his rank.

The registers of this branch of the family, settled in Ireland, were produced; by the first, as well as articles of intermarriage, it appeared, that the ancestor of the late Earl, who first settled in Ireland, was a younger brother of the then Earl of Wigton. The Register likewise proved, that the present claimant was the eldest, and only surviving son of the late Earl.

Several other collateral proofs were offered, and a depository of old writings produced, by a female relation of the family, which served to corroborate and confirm several of the foregoing facts.

The Lord Chancellor and Earl Mansfield asked some questions, relative to farther proofs of the authenticity of the papers, which the counsel nor agent did not seem prepared to answer.

The Solicitor General of Scotland.

The *Solicitor General* of Scotland, who was counsel against the claimant, said, that the session was so far advanced, that he feared he should not receive all the necessary documents from his client time enough to make out his case between this and the prorogation.

After a short consultation at the table, the farther hearing was adjourned *sine die*; and the claimant's case it was settled should be taken up *de novo* the ensuing session. Adjourned.

June 13.

Private and public business, in course. No debate.

June 14.

The Bp. of St. David's.

The private business being finished, the Bishop of *St. David's* moved, that the House do resolve itself into a committee, to take the Sunday-bill into consideration.

The Earl of Abingdon.

The Earl of *Abingdon* rose, and addressed their Lordships to the following effect:

My Lords,

Having already delivered my sentiments to the House upon the subject matter of this bill, it is not my intention

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to trouble your Lordships with any repetition of them; but, at the same time that I say this, I must take the liberty of adding, that I can by no means suffer this bill to pass through this House, without, in every stage of it, repeating my opposition and giving my negative to it. In the present moment then, I rise to object to its commitment; and this I do, my Lords, not in consequence of the arguments that have been offered against the bill, but in consequence of the want of argument that has been had in the support of it.

In objecting to this bill, upon the former occasion alluded to, I treated it as I thought it deserved; I treated it ludicrously, I treated it with gravity: I treated it ludicrously, for "ridicule (says my Lord Shaftesbury) is the test of truth." I treated it with gravity, that it might meet the gravity of the House: but having failed in that positive mode of attack, this negative kind of opposition may now possibly prove more effectual.

I say, my Lords, having failed, for the right reverend Prelate, who has adopted this spurious offspring, and means to legitimate it, by confounding the gravity of my arguments with the ridicule of them, and, by a curious kind of logic suited to the purpose, not only triumphed in his conclusions of giving no answer either to the one or the other, but had reason to triumph too in the majority which he obtained on the occasion. Indeed, knowing the high consequence of that right reverend Prelate, as well as the high opinion he entertains of himself, I expected nothing other than this from him: but the right reverend Prelate will give me leave to tell him, however he may boast of his victory within these walls, he will find his victory without these walls pretty much like the late victory of Lord Cornwallis in America: a victory that has ended in a retreat, and in the publication of a ridiculous proclamation (like this bill) which nobody minds, which nobody reads, and which every body holds in contempt.

But, my Lords, although it was not in my power to call up the right reverend Prelate to deliver his adopted child out of the hands either of ridicule or gravity, it gave me much pleasure to find, that the House was not deprived of hearing what the right reverend Prelate had to say in behalf of this adoption; for being called up by what fell from a noble Duke, [Manchester] he was then pleased to state what he had to offer in support of this bill, and it is to the paucity and

futility of the arguments that were then adduced by the right reverend Prelate himself, that I now rest my opposition to the farther proceeding upon this bill. What those arguments were, their recency renders it unnecessary for me to state. But, why do I call them arguments? I will appeal to the House whether any thing, that was said by the right reverend Prelate, had the shadow or colour of argument in it; or, if it had, whether it was not in direct opposition to the bill. The right reverend Prelate said, that in Roman Catholic countries, plays, operas, and other pastimes were admitted on a Sunday; but in Protestant countries they were not. But for what reason are they not to be admitted in Protestant countries? Does the right reverend Prelate know the wisdom and the policy of that measure? Does he not know, that the first and fundamental object of all government is, or ought to be, that the people of that government should be rightly employed? How much better is it, therefore, that people should be suffered to come together of a Sunday evening, under the eye and policy of their government, to be amused by entertainments, in which there is no moral turpitude, than to be left to go a whoring after their own imaginations, and in the commission of acts, which are not only *contra bonos mores*, but which neither the eye, nor policy of any government, can remedy or prevent. Another thing the right reverend Prelate said, was, that he had the highest law authorities to assert, that there was no law in force to prevent that which this act meant to provide against. Can there be a more decided argument against this bill? Will any law authority say, will his Majesty's Solicitor-General, the Representative of the University of Cambridge, say, that if these were disorderly meetings, that if any thing occurred at them, which was contrary to the peace and good order of society, that there are not laws in being, and laws in abundance too, in every respect full and sufficient not only to punish the offence, but to remedy the evil? What does the bill itself say? It says, that the Ecclesiastical Courts have themselves power to punish these offences, and provides, that this jurisdiction should not be altered or abridged by the passing of this bill into an act. What then is the obvious purpose of this bill? It is to make that a crime, which is at present neither *malum prohibitum*, nor *malum in se*, and to furnish punishments for offences, for which, if offences, it is admitted, punishments are already to be had.

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Upon the whole, my Lords, for what the right reverend Prelate has said, as well for what he has not said, I trust, if there were no other reasons, your Lordships will be of opinion, that as this bill does not merit, so it will not have, any farther the countenance and sanction of this House.

Before I sit down, my Lords, I will add one word more, as from myself, in argument against this bill: I have before taken notice of this bill in its ridiculous and in its serious light; but there is another light in which I wish to view it, and that is, in its hypocritical light. When I see that right reverend Prelate, and almost the whole of that right reverend Bench, voting for putting tomohawks and scalping-knives into the hands of savages, to perpetrate murder in its horridest extreme; when I see them (Protestant bishops,) voting for crucifixes to perpetuate and establish Popery in America, in order that Popery may establish despotism in the Crown; when I see them all blessing his Majesty, and in their address not only asserting the war with America to be just and necessary, but, (as a species of peace-offering, acceptable enough to the king of men, but from them, as ministers of the gospel, not quite so acceptable to the King of kings,) "praising God for every victory that has a tendency to the blessings of peace;" praising God for the shedding of human blood; for such is the object of their prayer: I say, my Lords, when I see these things, what must I think of this bill? What must I think of it, but as a measure intended to throw dust into the eyes of the people; as calculated to draw off the public attention from those that are above, and place it on those that are below, to make the world believe, that the sin is not in them, but that the wickedness lieth in the people: that the shepherds would save their flock, but that their flock will not be saved: that they are busied in good works, in their watchfulness and care over the morality, the virtue, and religion of the state; when at the same time they are on the contrary employed in upholding, maintaining, and supporting, with all their heart, with all their soul, and with all their might, the most corrupt, the most profligate, and the most abandoned administration, that ever cursed the Government of this or any other country upon the face of God's earth.

Such, my Lords, is my view of this bill, and such my ideas upon this subject, and now I have but a single word more to add. When that right reverend bench will pull out the

the beams that are in their own eyes, that they may see more clearly the mote that are in their brethrens, they will steadfastly meet with my support; until then, my Lords, my honour calls upon me to be, and to remain their firm determined opponent.

Bishop of St. David's

The Bishop of *St. David* replied, by observing, that, if his Lordship had said any thing new, or had treated the subject with a becoming degree of gravity and seriousness, he would have endeavoured to have given him an answer; but as no new arguments had been advanced by his Lordship, he should not take up the time of the House in answering them, and especially as they were of too ludicrous a kind to deserve an answer from a member of that House.

The Lord Chancellor now quitted the woolsack, and the bill being sent to a committee, Lord Sandys, as chairman of it, went to the table, when

Earl of Abingdon.

The Earl of *Abingdon* rose a second time, and said, your Lordships having thought fit to send this bill to a committee, my next struggle must be, as I cannot do away its wickedness, to lessen, if possible, for the honour of this House, the degree of its folly, and therefore my Lords, in order to this, I shall beg leave to trouble your Lordships with one or two amendments.

The first amendment, my Lords, is of the title-page of the bill; which being "A Bill for preventing certain abuses and profanations on the Lord's-day, called Sunday;" I would wish, after the word "profanations," to insert the words (as well) and after the word Sunday, to add the following words, (as on the other days of the week), and then the title will run thus: "A Bill for preventing certain abuses and profanations, as well on the Lord's-day, called Sunday, as on the other days of the week." And to this amendment, my Lords, I am led by the preamble of the bill itself; for it is there said, that "Debates having frequently been held on the evening of the Lord's-day, concerning divers texts of holy scripture, by persons unlearned and incompetent to explain the same, to the corruption of good morals, and to the great encouragement of irreligion and profaneness;" and therefore, my Lords, if this be true that debates held on the evening of the Lord's day (as described) are to the corruption of good morals, and to the great encouragement of irreligion and profaneness, debates (of the same description) held on any other evening, must necessarily produce the same effects; and if the same effects are produced on any other evening,

evening, as well as on a Sunday evening, it is equally incumbent upon us to remedy those effects; and if it be equally incumbent upon us to remedy those evils, it follows according to the rules of sound reason, as well as of sound logic, that my amendment stands without objection. Possibly indeed, it may be said, knowing the power of the legislature to pass an act for every day in the week, when the occasions shall call for it, and how easy a thing it is to multiply laws, that this law may prevent the other six from being enacted; but in answer to this, I am to inform your Lordships (as I am instructed), that these profaners, determined upon their profanations, and to evade this act, have already agreed upon Monday instead of Sunday evening to hold their future meetings; and therefore, my Lords, that we might not be outwitted by these sinners, I hold it best that we should prevent them at once, and by this bill, from debating upon any subject whatsoever (as the bill now enacts) upon any day whatsoever, and by this means give them a proof that we have at least as much wit as they have.

With respect, my Lords, to the debates of these men upon the alteration of their meeting from Sunday evening to Monday evening, they were so curious, that I cannot help giving your Lordships some account of them. It was first of all moved, that Saturday evening should be the time of meeting, instead of Sunday; and in support of this time, in preference to any other, it was argued, that the next day being Sunday, when it was not necessary for them to go to work, they could not only lie in bed all the day, and rest themselves, but by so doing, spite the Bench of Bishops by not going to church. To this it was answered, that Saturday being the Jews' sabbath, and the Jews being rich, and the state poor, the Jews might give the Minister a sum of money to prevent this meeting on Saturday evening, as had been done on Sunday; but here in reply it was argued, that the Jews being rich, and the state poor, when the Minister wanted the money of the Jews, he would take it as he had done the money of the East-India Company, by the omnipotence of an act of Parliament, and without any agreement at all; which removing the objection to Saturday evening, it was then contended by way of rejoinder, that Saturday evening was, according to the books of *Dæmonomania*, (books which the right reverend Prelates are no doubt acquainted with) the sabbath of the witches; that these witches, to prepare themselves for this meeting, take certain soporific drugs,

drugs, that then the devil appeared before them in the form of a goat, around which they make several dances and magic ceremonies, and afterwards fly away up the chimney upon a switch; and this it seems, my Lords, put the company in such a fright, that they all, *una voce*, agreed to change their meeting from Saturday evening to Monday evening. I hope, my Lords, I have said enough to induce your Lordships to adopt the amendment I have proposed; and if so, the next amendment will of course be, that the words "or upon any day whatsoever" be made follow after the word "Sunday," in the first enacting clause, and whenever else they may be required.

Earl of *Abingdon*.

The foregoing amendments were read in their order by the Chairman, and negatived; when the Earl of *Abingdon* rose again, and said, my Lords, my amendments being rejected, I have now an entire clause to propose, a clause of proviso, and it is this:

"Provided also, that this act does not extend, nor be construed to extend to Quakers' Meetings on a Sunday evening, inasmuch as these meetings being silent meetings, they cannot in any sense be said to fall under the meaning and intention of this act."

This clause being also negatived, the bill was committed; and ordered to be read a third time.

The order of the day being read, for receiving the report of the committee on the bill for inclosing the parish of Kington, in the county of Worcester, and the several amendments agreed to in the committee being read,

The Lord *President*.

The *Lord President* stated to the House the particular effect of the clause relative to tythes, as altered by the amendment; and after explaining in what particulars it had hitherto been held adviseable to provide for the clergy in cases of inclosure, said he must object to the amendment of the committee, since it effectually overthrew the clause, as it stood before the bill was committed.

Bishop of *St. David's*

The *Bishop* of *St. David's* began with observing, that he was present at the committee when the bill was considered; and though one of the amendments which he proposed had been adopted, yet as he had several others to make, which he thought equally necessary; and as the Lords of the committee were not pleased to accept them, he was obliged now to trouble the House.

The learned Prelate then went very largely into the whole system of tything; of compensations in lieu of tythes; of the

the nature of compenſations and commutations in general; and read a ſtring of reſolutions, which he would recommend in future to be inſerted in all incloſing bills, in order to enſure to the rector and vicar the real value of his tythes, to defend him againſt the oppreſſions of the lord of the manor, land-owners, &c. and to prevent the incumbent, for the time being, from entering into any fraudulent bargain which might prejudice his eventual ſucceſſor.

He then obſerved, that he had ſtated the ſubſtance of the amendments, which he hoped to have an opportunity of propoſing. He confeſſed that many of theſe clauſes were new, and different from the clauſes which had been hitherto inſerted in bills of this kind, but how expedient and how highly neceſſary they all were, his Lordſhip ſaid, would ſoon be made to appear in the cleareſt and ableſt manner.

He concluded with obſerving, that as nothing was intended by theſe amendments, but to provide that equal juſtice was done to all parties, and to take care, that as much was given to a man in one way, as was taken from him in another, he could entertain no doubt but that their Lordſhips, as friends to juſtice, would agree with him in ordering the bill to be recommitted.

Ld. *Sandys.*

Lord *Sandys* ſaid a few words in reply, and particularly with regard to the clauſe, the reverend Prelate had declared his intention to move to have inſerted, which gave the clergyman a right to appeal from the deciſion of the Commiſſioners, appointed by the act to ſettle the compenſation to be made to him in lieu of tythes. His Lordſhip ſaid, that clauſe would terrify perſons in the country, and frighten them from incloſing; for who would chooſe to have a ſuit of law hanging perpetually over his head.

The *Lord Chancellor.*

The *Lord Chancellor* roſe, and obſerved, the argument he had always heard in that Houſe and elſewhere was, that it was right to make the value of the tythes up to the clergyman by a commutation either of land, a corn-rent, or in ſome other way. With regard to a corn-rent, his Lordſhip ſtated that to be, in his opinion, the faireſt commutation that could poſſibly be adopted. Commutation of land for tythes he did not ſo much admire, becauſe in that caſe three parts of every parcel of land incloſed, nay in ſome four or even five, in proportion to the ſtate of culture, muſt, in order to make a fair and equitable commutation, go to the miniſter and reſt in mortmain, by which means, in length

of time, a great proportion of the kingdom would be in mortmain. His Lordship said, what had been stated to the House by the noble Earl who opened the debate, relative to the amended clause, was the strongest argument for the recommitment of the bill that could possibly be adduced; for the noble Earl had expressly stated that the clause did not give the clergyman a fair commutation, but merely calculated what the tythes were worth hitherto, and, upon that, and that only, made him up a something in lieu of them. This was in itself so unjust, that he was persuaded the House would not suffer it to pass in that form.

Lord Sandwich.

Lord *Sandwich* said, notwithstanding he had the misfortune to differ from the first authorities, and from men to whom he looked up with admiration, yet with regard to inclosure bills, he could not give up his opinion. What that was the House well knew, for he had delivered it on a former occasion. He had since that time examined his own mind, in order to see if he could find any fallacy in the ideas upon which his opinion rested, and he found none. He had also since that time conversed with a great variety of persons upon the subject, and they had all agreed with him, that the easiest, the most certain, and satisfactory compensation for tythes, was that which had been adopted in almost every inclosure bill that had passed both Houses of Parliament, viz. commutation of land. So perfectly convinced was he of this, that not all the eloquence nor all the abilities of the most powerful orators could induce him to change his opinion. There had now, his Lordship said, been near nine hundred inclosure bills passed, in every one of which almost commutation of land was the mode adopted, and he had never heard the least complaint whatever; he wondered therefore to what new formed opinion, to what sudden impulse of zeal, these attempts at innovation were to be imputed. He must and would resist them whenever they were made. He professed himself a friend to inclosure bills; those that had passed he was confident had been of essential service to the public; and so satisfied was he, that the more inclosure bills the better, that as far as his poor abilities would enable him, he would support every inclosure bill that should be brought into the House. His Lordship, speaking of tythes, said, their being abolished gave peace and happiness to the country; and as to corn-rents, they made persons estates appear larger than they really were; whereas commutation by land settled the matter at once.

His

His Lordſhip concluded with objecting to the recommitment of the Bill.

The Lord Chancellor. The *Lord Chancellor* replied, that nothing could be more unfortunate for the cauſe of juſtice, than when a propoſition was objected to, for thoſe who oppoſed it, inſtead of meeting it fairly in a direct and manly way, to draw in a number of topics extraneous to the ſubject matter, and in a general ſtile of reaſoning to call the attention of the Houſe to thoſe foreign topics. Such he obſerved was the noble Earl's mode of debating the preſent queſtion, which was not whether the tythes of the parſon ſhould be compenſated for by a commutation of land, or a corn-rent, but whether the compenſation held out by the bill, a compenſation founded on a calculation, *a retro*, was the ſort of compenſation which their Lordſhips would hold to be adequate to the caſe in queſtion. In arguing this point, he appealed to the Houſe, whether ſaying "I am a friend to incloſure bills, and I will ſupport them," had any, the ſmalleſt reference whatever to to the ſubject? Juſt the ſame ſort of reaſoning it was, for the noble Earl to ſay, reſpecting the commutation of tythes for land, that he had never heard of any complaint, although nine hundred incloſure bills had paſſed, and moſt of them in that way. To this, would it not be an appoſite anſwer, and juſt as good reaſoning for him to ſay, he had heard a great number of complaints, which he undoubtedly had? One thing, his Lordſhip ſaid, he muſt deſire of thoſe who thought differently from what he did on this or any other ſubject; and that was, not to ſuggeſt that ſome new zeal, ſome ſpirit of innovation or other, had ſuddenly ſeized him. The ſole conſideration that weighed in his mind was, whether what he aimed at was right, and conſonant with ſtrict juſtice. In many of their incloſure bills their Lordſhips had from inattention ſuffered what was wrong to paſs, and in conſequence the parties had not been done juſtice to, which they had a right to expect from Parliament.

His Lordſhip ſtated a variety of amendments, which he propoſed to offer for the better regulation of future incloſure bills. In particular, he objected to the mode of ſettlement of the claim of the miniſter by three commiſſioners: he thanked God that the property of an Engliſhman depended not on ſo looſe a tribunal in any other inſtance whatever. His Lordſhip expoſed the inequitable conſtitution of of this tribunal by ſtating, that out of a pretence to do the parſon juſtice he had the nomination of one commiſſioner,

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but at the ſame time the other parties named two, ſo that in fact the Miniſter might as well have no nomination at all. As a proof of the iniquity practiſed in ſome caſes, his Lordſhip ſtated to the Houſe an inſtance or two that had fallen within his own knowledge. The means of prevention that he ſhould propoſe, were theſe: to oblige the commiſſioners to take down their examinations and proceedings in writing, in order that the party aggrieved might render them ſubject to reviſal before a better and more competent juriſdiction. To oblige them alſo to receive the teſtimony of ſuch witneſſes as the reſpective parties ſhould tender, and to take down their depoſitions in writing, and upon oath. If either of the parties afterwards thought himſelf aggrieved, to re-examine the whole matter, and to ſtate the re-examination in writing and upon oath, in like manner as before; and then to ſuperadd a right of appeal. As the act ſtood, he conceived there was an appeal to the Quarter Seſſion. When the Quarter Seſſion was alluded to, his Lordſhip remarked, it was no unuſual thing to hear, that in a particular part of the country, where this and that noble Lord lived, the gentlemen who came to the Quarter Seſſion were ſuch and ſuch; perſons ſo reſpectable, of characters ſo known and eſtabliſhed, that they were ſuperior to reproach. All this, his Lordſhip ſaid, might be, and he did not doubt was ſtrictly true in various inſtances, but he meant to lay the whole conſideration of perſonal character out of the queſtion, and to ſpeak to the conſtitution of Quarter Seſſions in general, rather than to make the leaſt reference to individuals, either reſpectable or otherwiſe. Quarter Seſſions were not the ſort of juriſdiction fit to try appeals of the nature under conſideration, from the ſhort time of their ſitting, and from various other objections. But then, as a great piece of wit, it had been thought a mighty good turn upon him to ſay, "What, would you take them into Weſtminſter-Hall!" He begged to know why not? Did their Lordſhips think his Majeſty's courts of law unfit to hear ſuch appeals. Thoſe courts, where the parties could be told from authority how the law ſtood! Thoſe courts, who could direct ſuch iſſues as might appear neceſſary to be tried! But then it had been ſaid, "Going into Weſtminſter-Hall is expenſive; you will terrify the people from encloſures." Indeed! did the noble Lords, who uſed theſe

arguments,

arguments, know, that the expence of going into Westminster-Hall was so trifling on such appeals, that it would cost the parties no more than appealing to the Quarter Sessions? And then in order that frivolous and captious suits might not be brought there, he intended to make the appellants, if they failed in their appeal, liable to double costs; a circumstance which would effectually put a stop to slight, idle, and ill-founded appeals.

After going through a variety of regulations, which his Lordship said he should propose, he at length came back to the consideration of the bill itself. Its principle he admitted to be right, that was on all hands agreed; what he wanted was, to make the clauses come up to the principle, which in their present form, he contended they did not. His Lordship having argued this for some time said, if he failed then, he would try again and again, for as long as he lived he would never consent to a bill's passing imperfect as that bill was. He knew the day would come, sooner or late, when their Lordships would agree with him upon the point in question, and he did assure them, all he laboured at was to render their legislative proceedings as pure and as just in every respect as every one of their Lordships were determined their judicial proceedings should be; in fact, he wanted to make their purity as a House of Parliament equal to their high authority.

Lord *Dudley* said, he must object to the re-commitment; but he did assure the noble Lord he did not mean to be witty at the expence of Westminster Hall. He had no talents for wit, and if he had been blessed with any, he should not have ventured to have employed them against the ability of those who so laudably filled the seat of justice in Westminster-Hall. His Lordship declared himself of the same opinion with his noble friend [Lord Sandwich]; he was a friend to inclosures, and to commutation of land in lieu of tythes. With regard to what the learned Lord had said of the commissioners injustice, he could only declare, that in the country where he lived the commissioners had always given satisfaction. They were men of character, and men universally respected. He proved that there was no appeal to the Quarter Sessions in the bill; and after several arguments in support of the bill, asked if any one of their Lordships went into Westminster-Hall, whether he did not find it pretty expensive to come out again? Besides (added his Lordship) Westminster-Hall is not the end of the evil;

Ld Dudley.

if

if these appellants go there, in all probability they must come here, and appear by their counsel at your Lordships' bar." [The Lord Chancellor said from the woolsack, no, no; but the Lord President and Lord Loughborough, sitting by Lord Dudley, one of them said yes.] His Lordship said, he knew not whether he was in the right or not; great authorities were divided in opinion.

The *Lord Chancellor.* The *Lord Chancellor* observed, that the argument against the recommitment turned out exactly as he foretold. He had been answered as to one immaterial point, while all the rest of his argument, those parts which came nearest to the question, were suffered to pass unnoticed. He cautioned the House against accustoming themselves to hear strong objections, and without having heard them obviated, to make up their minds to vote decisively. From one point laid down by the noble Lord it was evident, that justice as well as reason rendered the re-commitment of the bill indispensibly necessary. There was, it seemed, and he owned it had escaped him before, no appeal whatever in the bill. He conjured the House therefore, for their own honour, to make one; or if they would not consent to that, at least to oblige the commissioners to take down the examinations in writing, that their proceedings might be capable of being subject to a revisal, and that the party who thought himself aggrieved by their decision, might shew them the written evidence of their own acts, and be enabled to say to them, "thus hast thou done!"

Ld. *Sandys.* Lord *Sandys* mentioned a few words on the general idea of there being no appeal from commissioners. His Lordship instanced the commissioners of the land-tax. At length the House divided. Contents for the commitment 4; non-contents 24. Majority 20.

The minority was composed of the Lord Chancellor, the Earl of Galloway, and the Bishops of Lincoln and St. David's.

June 15.

The bill for preventing the profanation of the Lord's-day was read a third time, and passed.

The petition of Colonel Twistleton, claiming the barony of Say and Sele, as heir-general to the person first seised of that honour, was, upon motion, ordered to be deferred till Thursday, the 21st instant.

Much

Much public business in course, but no debate.—Their Lordships adjourned to Monday.

June 18.

The order of the day for the second reading of the Isle of Man Bill, being moved for, the Lord *Chancellor* observed, that in order to expedite the business before the counsel were called in, it would be necessary that their Lordships should know whether the objections meant to be urged against the principle of it, or only against particular clauses; because, if not against the principle, the bill might be read a second time, and immediately committed; whereas, if against the principle, the proper stage to oppose it would be in the order of the day for reading it a second time.

The counsel against the bill were then called in, and having declared it was against the clauses, not the principle, they meant to object, the bill was then read a second time; and immediately after the House resolved itself into a committee thereon.

Mr. *Bearcroft*, as counsel against the bill, entered into a very learned argument, stating his objection against the several clauses.

To prove some of the material facts on which his arguments were founded, he called several witnesses; among others, a Mr. Lutwyche, the collector appointed by the Crown in 1765. The purport of his evidence was, to shew that the present bill would infringe upon several of the rights and privileges vested in the Crown, by the act which passed in 1765, for giving the late Duke of Athol and his Duchess a compensation for the sovereignty of that island.

He was interrogated by several noble Lords, particularly the Lord Chancellor, Lords Mansfield and Temple, and the Duke of Athol.

At length the House was resumed. The Chairman ordered to report the progress, and the committee adjourned to Friday next.

June 19.

As soon as the private business was over, the Duke of *Richmond* rose, and after explaining the material parts of the petition which he held in his hand, begged permission to present a petition from the American prisoners, in Mill-House prison, complaining of their being deprived of a proper allowance of bread, clothing, &c.

The

The petition was accordingly received, and being read at the table, purported that the petitioners were allowed only one pound of bread a day, while the French, Spanish, and Dutch were allowed a pound and a half, within the same period; and concluded with praying for a larger allowance of bread, and for a more regular supply of clothes and other necessaries.

The usual forms being thus complied with, his Grace said, he wished to call their Lordships attention to this business; for though not a subject of the first consequence, it was one in which their Lordship's humanity was deeply interested; he would add more, the principle of humanity might be still farther extended. The men who had fought our battles by land and sea, might feel in turn all those ills the petitioners complained of, and though retaliation upon individuals, who could be supposed to have no hand in those acts of severity and oppression, was infinitely cruel and unjust; yet so it happened, that the poor prisoner was often made to experience in his own person those ills which was inflicted upon him, on account of the presumed oppression or misconduct of government.

His Grace, after this short prefatory discourse, moved, that the petition do lie on the table. This being agreed to, his Grace moved, that said petition be referred to a committee of the whole House, on Monday se'nnight.

He could not sit down, he said, without making one observation. He thought it necessary that some of the servants of the Crown should rise, and state to the House whether the principal fact stated in the petition, namely, that the Americans received but one pound of bread a day, while the French, Spanish, and Dutch prisoners received a pound and an half, was or was not true? because if the fact was denied, it would be necessary to move, that the commissioners of hurt and sick seamen do attend to give evidence. On the other hand, if the fact was admitted, the committee might proceed immediately, on the day appointed, to take the contents of the petition into consideration.

Earl of *Sandwich*. The Earl of *Sandwich* said, he entered the House wholly unprepared to speak with any confidence on the subject, but, he assured the noble Duke, he made no doubt but he should be able to give him and the House every satisfaction they wanted.

All he was at present prepared to say, was, that the American prisoners stood upon a very different footing with those of

of France, Spain, and Holland; the latter being deemed prisoners of war, according to the established law of nations; the former being deemed criminals, found in arms against their lawful sovereign.

His Lordship concluded, with expressing an earnest desire, that the matter should be brought before the House, and fairly and fully discussed; and as the noble Duke had intimated a wish or intention of moving for the attendance of the commissioners of Sick and Hurt, in order to be examined as to the truth of the allegations, set forth in the petition, he hoped the noble Duke would follow what he had already done, by moving for their attendance.

Duke of Richmond.

The Duke of *Richmond* said, he was well pleased to find, that the noble Earl was so willing to forward the enquiry, and he should chearfully adopt his Lordship's recommendation, in moving for the attendance of the commissioners of sick and hurt.

As to some of the observations which had fallen from the noble Earl, now was not the time to enter into the discussion of the merits how far the Americans were entitled to be treated on the foot of prisoners of war. The committee was the proper place, and as such he should reserve whatever he had to say on the subject till the question came before their Lordships, accompanied with all the circumstances and facts necessary to enable the House to come to a satisfactory and equitable decision.

His Grace moved for the attendance of the commissioners, agreeably to the wish expressed by the noble Earl; which being agreed to, the House adjourned.

June 20.

Private business being finished, the order of the day for the House to resolve itself into a committee on the Almanac-duty bill, Lord Sands was called to the chair.

His Lordship read several of the clauses, which were agreed to, till he came to that by which any person who shall vend or expose to sale an almanac without a stamp, or on which the stamp or impression shall be plainly made, if convicted, shall be liable to a penalty of ten pounds.

Lord Chancellor.

The *Lord Chancellor* wished, that those intrusted with the drawing up of bills, were either more careful or better instructed. The clause struck him as directly contradictory; for while it neglected, according as the clause was worded, to enable the prosecutor to recover the penalty, where there was

no stamp, it punished the vender for complying with the very principle of the bill, that of raising a certain sum of money by a stamp duty.

Earl Bathurst.

Earl *Bathurst* rose to explain. He said various frauds had been practised, with regard to the printing and selling of almanacs; among others, it had been a practice so to contrive to print a sheet almanac that it could be cut into pieces and made up in the form of a book; another was, printing them upon blank paper, and cutting out the stamps of an old almanac, and affixing them thereto. The present clause to defeat both species of fraud, ordained that the almanacs should be so printed, as that part of the printing should appear on the stamp, which would in his apprehension effectually prevent the annexing an old stamp to a new almanac.

Lord Chancellor.

The *Lord Chancellor* disapproved of the explanation, as containing no satisfactory answer to his objection; at least, he was so dull of apprehension, as not to comprehend it. What struck him was, that some word had crept into the clause, which the penner of it never designed. It was fair to presume, that he intended to state it in this manner, that where there is no stamp, or where there was not a plain stamp, that the vender or owner was liable to pay a penalty of ten pounds. He imagined therefore, that the word *not*, was by accident omitted. It appeared to him a gross mistake, and as such he recommended to their Lordships not to give their sanction to what at present seemed to him to be nonsense.

Earl Bathurst.

Earl *Bathurst* said, he had attended carefully to the noble and learned Lord's objection. The clause, if altered, would enable the fraudulent as heretofore to use the old instead of new stamps, such would be the consequence of his Lordship's amendment, for by introducing the word *not*, the venders of almanacs would be at liberty to have recourse to their long practised frauds with impunity.

The clause was agreed to without farther opposition; and witnesses called to the bar and examined, to prove the allegations stated in the preamble.

The witnesses were Doctor Dennis, vice chancellor of the university of Oxford; and Mr. Borlase, register of the university of Cambridge; and a Mr. Young.

The substance of the evidence was, that by a charter of Charles I. the university of Oxford were authorised to print all manner of books, almanacs, prognostications, &c. that the

the university had leased this right to Messrs. Wright and Gill in the year 1766, at a rent or sum of five hundred and fifty pounds per annum, upon a presumption that the printing of such books was vested in the university exclusively. The original lessees re-leased the same to the Stationer's company in 1767, when it appeared that the company rendered Messrs. Wright and Gill the above sum for a part, namely the liberty of printing almanacs, psalters, A, B, C's, &c.

The original charter granted to the university of Cambridge was next produced, granted by Henry VIII. in the 20th year of his reign; proving, that an equal right had been vested by that charter in that university.

Several questions were then put to Mr. Dennis from within the bar, particularly by Earl Bathurst and Lord Walsingham; the substance of his answers was to the following effect.

That the university had continued to receive from Messrs. Wright and Gill the sum specified in the agreement till after a decree of the court of Chancery in 1776; that the money was partly applied to the keeping the school and public buildings in repair, and partly expended in the printing of learned works. He mentioned several that had been printed, or were now at press; which, from their nature, had, or were likely to have a very limited sale. Dr. Kennicott had, to encourage him to prosecute his learned and useful researches, an allowance of fifty pounds a year out of this fund; but that since the decree made by the court of Chancery, in the case of Carnan, the Stationer's company having discontinued their payments, Mr. Alderman Wright had agreed to pay for such part of the monopoly as remained the annual sum of two hundred guineas.

Mr. Borlase upon being examined, by several noble Lords, said, the five hundred a year received from the Stationer's Company, was mixed in the general fund of the university; that it had discontinued the printing of learned books, and confined their press solely to the printing of such works as were likely to produce a profit. He stated several other circumstances of less consequence; and concluded with saying, that the annual estate of the university was about fourteen hundred pounds; that it possessed ten thousand pounds in the funds, but that the interest received thereon constituted a part of the annual income already mentioned.

As soon as the witnesses withdrew, the *Lord Chancellor* said, the allegations contained in the preamble remained yet to be

Lord Chancellor.

proved, not a syllable in either of the charters read at the bar giving the least colour to the vesting an exclusive right in the universities to print almanacs, which was the very essence of the bill, and the only solid ground on which it could firmly stand or fall.

His Lordship begged to know what were the words in those charters which conveyed the monopoly. With all his industry, and he had been peculiarly attentive while the charters were reading, the only phrase or sentence which made any impression on his mind was, *omnes libros omnimdo impressos*; that right the university of Oxford had granted to Mr. Wright for the valuable consideration of two hundred guineas a year. He submitted therefore to their Lordships, whether it would be fitting their wisdom and dignity, he might add their justice, to state that, in the preamble of a bill, to be law which was known not to be so, nor had ever been considered as such. If the facts and question of law had been truly and fairly stated, their Lordships would in that case be at liberty to act agreeably to their own judgement, they might think proper, as was the case almost every day, to make that law which was not so before; but as long as he had the honour of a seat in that House, he should ever set his face against any legislative act, however necessary or well intended, which carried on the face of it facts mistated, or false suggestions, as the grounds of their Lordships assent. This indeed, if countenanced or practised, would be a most dangerous innovation, because it would in its consequences go to the corrupting the great fountain of ligislation itself, and in the end be productive of every species of evil.

So far as to the justice of the bill, as to the intended application of the money propoled to be raised by it; he confessed himself totally ignorant what motive or pretext there could be for wantonly lavishing so considerable a part of a public tax upon the two universities. Was it consistent with the wisdom and prudence of that House, at a moment like the present, when the country was pressed to the very bone by accumulating debts and taxes; when every possible means should be resorted to, to reduce the public expenditure within the narrowest circle of the most rigid œconomy, consistent with the safety, honour, and well being of the state. Was it in any point of view justifiable to bestow so large a sum, or rather throw it away upon so trifling an object?

Had

Had there been any proofs adduced to ſhew that the univerſities would thrive better with the five hundred pounds, it might furniſh one argument in favour of the bill; but he would ſo far do them juſtice as to acknowledge, that nothing like it had been pretended. It was acknowledged by one witneſs, that the money received by the univerſity of Oxford had been ſpent in public feaſts, till a regulation had taken place to prevent it; and at Cambridge it had been all along thrown into the common ſtock of the univerſity; nor was either ſtipend, in his apprehenſion, employed to any of the uſes for which they had been originally granted.

Taking the matter in the moſt favourable point of view, was it of material benefit that the univerſity of Oxford employed their money in printing books, which, when printed, nobody would buy, as had been very ingenuouſly ſtated by the reverend gentleman when examined at the bar; and for what reaſon? the very beſt in the world, becauſe when printed it was one man in a thouſand, nay in an hundred thouſand, could either read or comprehend them.

For his part, when he went to univerſity, he endeavoured to acquire that ſpecies of learning which promiſed to be moſt uſeful to him in his intended purſuits of life, otherwiſe he ſhould think that he had ſpent his time very unprofitably. He never troubled himſelf about Perſian or Coptic, but confined his attention to that kind of ſtudy, which was likely to make him underſtood, and to enable him to underſtand in turn.

Much ſtreſs had been laid on an edition of Lord Clarendon's State Letters; yet, whatever merit the univerſity of Oxford wiſhed to derive from this circumſtance, it was at moſt but partial. There were many wiſe and able men of all parties, who thought it would have been full as well if the idea had never been ſuggeſted or adopted,—who were of opinion, that the private letters of ſtateſmen might have better lain in their original depoſitaries, than after ſo many years be dragged into public view.

His Lordſhip adverted to other books mentioned at the bar, which he called curious trifles; and obſerved, that at Cambridge, they had long ſince wholly forbourne to print any books but ſuch as held out a proſpect of a profitable ſale. His Lordſhip obſerved, that conferring favours on the univerſities, was attended with a certain degree of popularity very pleaſing to ſome men. It invited to panegyric and eulogy. It was eaſy to make a fine ſpeech in their praiſe; and to ring the changes, *ad infinitum*, upon

upon the propriety of doing every thing which could promote their interest, as the great seminaries of morality, religion, and learning. This all founded very well in a speech; but however great the deserts of the universities might be, it was one thing to reward them, and another to sacrifice law, truth, justice, and prudence to effect that, which, if necessary, could be effected without any sacrifice whatever.

He believed no noble Lord who heard him, entertained an higher veneration and respect for those two learned seminaries than he did. Extensive as they were in their learning, and exemplary in their morals, he considered them as every way entitled to public esteem; he thought them productive of the highest national benefit, and a public ornament to the kingdom; but deep as these ideas had imprinted themselves in his mind, he could never consent to the passing of a bill, the ground of which was founded in falshood. The claim or right stated in the preamble, being equally repugnant to law and justice. The law had already declared itself against the claim; it was unsupported by custom, and was of course, in whatever shape it might be brought forward, founded upon false premises. So far he thought he had discharged his duty; if however a majority of their Lordships should differ with him in opinion, he should in that event acquiesce, being resolved to give their Lordships no farther trouble.

Archbp of Canterbury. The Archbishop of *Canterbury* said, for his part he totally differed from the learned and noble Lord who spoke last. He could not see the bill in the same light in which the noble Lord had described it.

As to the money proposed to be granted to the two universities, and which had been formerly paid by the Stationer's company, it had been paid for a lease of that right, which by the charters granted to the universities, it was presumed had vested such a right in them. This right had not been questioned for a period of upwards of 150 years, and it was universally understood, that the princes who granted those charters, were fully competent so to do; not as an act of mere prerogative, unsupported by law, but as supreme head of the church.

The Calendar, annexed to the book of Common-prayer, formed part of the ritual; and therefore, in his opinion, came very properly under the cognisance of the church, and of the king its supreme head.

In

In former times, the Archbishop of Canterbury, or his chaplain, revised or examined every almanac before publication, and even still the same custom was adhered to in respect of the Calendar. His Grace concluded a speech of considerable length, with declaring his full approbation of the present bill, as supported by ancient indisputed claims, and strictly conformable to the rules of equity and justice.

Lord *Walsingham* opened his speech with acknowledgements of the great abilities of the noble and learned Lord who spoke lately, [the Lord Chancellor] and professing his great respect and prompt attention to whatever fell from that noble Lord. That it would ill-become him to attempt to follow that learned Lord upon this question as a point of law. That he could not conceive the merits of the decision of the court of Common Pleas need now be the subject of their Lordships discussion. Yet, if ever that question should again be agitated in any other shape, the decision he was sure would stand the test of the severest scrutiny; and though his own partial opinion might lead him from particular reasons to treat it with unusual deference and respect, yet he was authorized as a public man to speak of it as perfect, because unanimous and hitherto uncontradicted; binding because no man had ventured to appeal from it. The fact however was, that whether the decision was right or wrong, the universities had from that moment been deprived of a revenue of 500l. per annum each, which they had long been in the receipt of, in consequence of their having made over to the Stationer's company their right, whether real or supposed, of printing almanacs, until it was found that such a right was not exclusive. The bill was offered, under these circumstances, to their Lordships consideration in two lights: First, to raise an additional sum of money by way of duty upon almanacs; secondly, to appropriate 1000l. per annum of that sum, as an indemnification to the two universities for the loss they have sustained.

Lord *Walsingham*

But the noble Lord at the head of his Majesty's council had urged another very material reason, distinct from the professed object of the bill, to induce their Lordships to concur in passing it into a law, and that was respecting the revenue, which the noble Lord proved to have been grossly injured, and that in a two-fold manner, both by fraud and evasion. The act requires a single duty for almanacs printed on one side of the paper, and a double one for all others. This they evade, by printing a sheet almanac

so that it could be folded up and bound up in a book, and be sold as a book almanac, which ought to pay double duty; and secondly, by cutting off old stamps, and affixing them to new almanacs; to prevent which, it is now proposed to print the almanac over the stamp. They answered in effect, it was true, the same end, though the mode differed according as opportunity or expediency invited.

He did not take this merely for granted, though he heard it urged in argument, but formed his opinion upon the most incontrovertible evidence, the acknowledgment of of one of the offending parties: for Mr. Carnan had himself admitted the fact, and stated by way of apology, that it had been the custom of the trade, and he had done no more than the rest of his brethren. He told their Lordships plainly, in an instrument containing his case, that he had been obliged to do so; consequently there could be no further doubt respecting that species of evasion, which, in his opinion, fully supported the preamble of the bill, which was a material part of the noble and learned Lord's objection.

His Lordship hoped, after such proofs as these, the House would entertain no farther doubts, respecting the material injury the revenue must continue to suffer should the present bill be thrown out; and if any additional motive were necessary to quicken their Lordships attention, he trusted the very pointed and just observations made by the noble Lord who spoke last, would be sufficient to satisfy their Lordships, that the present bill, independent of the profest object which it held out, seemed in the present situation of public affairs to challenge double attention.

The noble Lord had remarked with his usual ability, and pressed with his wonted weight and force of argument, the necessity of a strict collection of the national revenue, and of its faithful application and expenditure in the public service. It followed then, that if the present bill went to correct or detect an existing evil; namely, evasion of payment or actual fraud, that it of course embraced one of the prime objects, which the noble and learned Lord appeared to have so much at heart.

On this ground the bill appeared most clearly to meet the sentiments of the noble Lord, and of course must so far strike his Lordship, as wise, necessary, and expedient. He begged however to make one observation upon an argument which had fallen from the noble Lord, and which must strike home to the feelings of every serious and of every

honest

honeſt mind, viz. the care that ſhould be taken how new taxes were impoſed upon the ſubject, which might be an additional grievance to them under their preſent difficulties: This was a tax, which if not raiſed by the bill, was not to be paid at all: it was an optional tax, not a tax of compulſion; for every man might buy an almanac, or not, as he pleaſed: it was a tax upon curioſity perhaps, or upon luxury, for it could hardly be called a neceſſary of life; it could be but two-pence in a year upon each individual, and moſt of all, it would fall upon the fraudulent, and not upon the honeſt part of the community.

The utility of the bill in his apprehenſion being thus proved, he hoped, to the full ſatisfaction of every noble Lord who heard him, the application of the ſum, propoſed to be raiſed, was in his opinion no leſs commendable, as alſo what advantages the public would be deprived of, if this bill did not paſs into a law. He expatiated on the many uſeful and valuable books which never would have ſeen the light if it had not been for the encouragement they received from this fund, works of a curious and literary deſcription, but perhaps not in great demand from the public at large, and which therefore it would not have anſwered to any perſon or the trade to have printed to public ſale. He dwelt on the excellence of their editions of the claſſics, and referred the Houſe to the preface of "Dr. Harwood's Claſſics," a book of good repute, in which the univerſity publications are deſcribed at large.

His Lordſhip took an occaſion, in the courſe of this eulogium on the two univerſities, to allude to his own education there, but more particularly to his father's having repreſented the univerſity of Cambridge; yet how much ſoever he might be attached, as if he acted on a public meaſure from his private feelings, he did aſſure the Houſe he never wiſhed to ſubſtitute partiality or prejudice for motives which could only operate with him as a legiſlator. He was bound, as a member of that Houſe, to ſtifle or ſuſpend his feelings, and only to conſult his judgement, abſtracted from every other conſideration; to take up the meaſure fairly, and conſider it only upon public ground.

In that point of view he was perſuaded, that the bill now before the Houſe would appear to be ſtrictly and fully entitled to their Lordſhips countenance; as the benefits intended to be conferred on the univerſities, were not partial or perſonal benefits to them excluſively, but directed ex-

 preſsly

prefsly to the advancement of fcience, and the diffemination of learning. His Lordfhip then drew a comparifon between the protection given to other univerfities in all the polifhed courts of Europe, and called upon the Houfe to enable our own univerfities to maintain the high rank they at prefent enjoyed over the whole globe, as repofitories of knowledge and fcience, in all their refpective branches. He faid, it had ever been the practice of all civilized countries in all times to encourage thefe inftitutions, for the obvious benefits which were the natural refult of them. It had been fo from the days of the learned and eloquent ftatefman, who eftablifhed the firft library at Athens, down to the times in which we live, and where that laudable emulation is ftill to be obferved in thofe modern ornaments of Europe, the Emperor's library, the Louvre, and the Vatican.

Surely then with us it is peculiarly an object of legiflative confideration: it has always been confidered fo; and it is upon this principle that the act of queen Anne directs, that copies of all books, entered at Stationers Hall, fhould be delivered to thofe two univerfities. And in the year 1736 he mentioned an inftance of an account being laid before the Houfe of Commons, of the actual number which had been then delivered, and which number he ftated to the Houfe. He alfo mentioned other inftances, in which Parliament had taken up the caufe of the univerfities on public ground.

He knew it would be very unneceffary to quote the example of the other Houfe, or endeavour to roufe in their breafts a commendable emulation in refpect of the encouragement to be given to learned men and learned works. He was perfuaded, that their Lordfhips would not be behind hand with the other Houfe, but would gladly ftand forth the protectors, encouragers, and patrons of fcience, whenever patronage and protection became neceffary. And here he begged leave to obferve, with all poffible deference to the noble Lord who fpoke laft, who he hoped would excufe him for differing from him refpecting the works printed at the Clarendon prefs, which the learned Lord reprefented as totally ufelefs, and not calculated to anfwer the real and fubftantial purpofes of learning. He believed that might be the cafe in fome inftances, but by no means in all, or even in a comparative degree. But, allowing that the objection was better founded than it appeared to him to be; he would fubmit to the learned Lord, whether what might feem not to be calculated to convey general inftruction,

would not reflect honour on the university for their attention, even to the most abstruse works, if they could be useful to any particular or local branch of literature, and by having made their way to the several great seats of learning, in Europe remain as monuments of the disinterestedness and public spirit of a British university.

His Lordship urged several other able and apposite arguments in favour of the bill, which, on account of the continual disorder and talking below the bar, we could not properly collect. And, after passing some farther compliments on the Lord Chancellor, said, the bill was, upon every ground of justice and utility, entitled to his most hearty concurrence.

The *Lord Chancellor* said, he thought it necessary before the committee rose, to explain a few particulars which seemed to be misunderstood by the noble Lord who spoke last.

The Lord Chancellor.

His Lordship, before he went into explanation paid several handsome compliments to the noble Lord's candour and abilities. He was a credit to that House, and an ornament to his public character, and as so accomplished a speaker was listened to with that degree of attention which distinguished talents were ever sure to command, it became the more necessary for him to prevent the effects of misapprehension in the speaker.

It was merely on this ground that he rose again, after having been up so often in the course of the afternoon, and he trusted their Lordships would accept of this as a proper apology for the trouble he was going to give them.

The noble Lord had thrown out an idea relative to the legal decision between the Sationer's company and their opponent, as if he had called the justice of that decision in the court of Common-pleas in question. Had he done so, he should have laid himself justly open to the most severe animadversion, because that decision made no part of the present case, and if it had, would in the manner represented by the noble Lord, have weakened, instead of strenghtened his argument. The question, if he understood it right, was not directly concerning the charters granted to the two universities; but to the validity of the patent which they had granted to the Stationers company.

His Lordship made two or three observations to the same purport, and sat down with declaring his total disapprobation of the bill.

The clauses being all agreed to, the bill was immediately reported, and ordered to be read a third time.

The House adjourned at eight o'clock to the next day.

June 21.

* Their Lordships this day resumed, according to order, the committee of privileges and elections on the claim of Colonel Francis Twisleton, to the barony of Say and Sele.

The proofs were complex and various, and were rather circumstantial and collateral, than specific and direct. The claimant had a very full bar; his counsel were, the Attorney General, and Messrs. Macdonald, Lee, and Kenyon.

It was first stated, that by letters patent, the 21st of James I the ancestor of the claimant, Col. Twistleton, of the name of Fiennes, was created baron Say and Sele, to him and his heirs, which of course rendered the honours descendible to the heirs-general, in failure of male issue; that this Lord had issue four sons, none of whom had issue but the second son, who had a daughter, who was married to a Mr. Twisleton. There was only a part of this son's will read, to prove this marriage; which, among other things recited, that his daughter had inter-married with the claimant's ancestor without his consent, and contrary to his approbation. The next proof was, a petition in 1709, presented to the House of Peers, we believe, when the honours were claimed by the son of this marriage, and his claim was allowed, as appeared by an entry on the Journal.

The case farther stated, that this claimant had four sons, all of whom died without issue male, but the claimant's ancestor; that the eldest son left issue one daughter, who was Lady Langham, and that she died, in the year 1715, without issue.

To prove the honours to be vested in the descendants of the second son, there was little more produced than the copies of two monumental inscriptions.

These stated, that the second son of the first Lord Say, of the Twisleton family, married in Ireland; that he had served abroad in the wars of king William and queen Anne, &c. and retired with the rank of colonel from the service in the year 1715; all which was inserted on his monument in the church of Boughton, in Oxfordshire; which inscription was authenticated upon view, by the present rector of the parish. Two other monumental inscriptions were stated, one of them in Kent, the other in Bunhill-fields burial-

ground,

ground, referring to the relationship, of the respective persons deceased, to the family of Say and Sele, which then possessed the title. One of the inscriptions was proved to exist; the other, upon search, was not to be found, or was so defaced as not to be intelligible, though there was an affidavit, signed by a noted and respectable solicitor, offered in evidence, that he had seen and read said inscription in Bunhill fields, in the year 1732, when the claimant's father sued for the present honour.

A copy of a certificate of the marriage of Col. Fiennes Twisleton, the grandfather of the present claimant, with a Miss Clark, in the castle of Dublin, was offered, but it would not be received as evidence, as the original ought to have been produced, or the copy authenticated, at the bar.

Mr. Thomas Twisleton's will, son of Colonel Fiennes Twisleton, and father of the claimant, was read, to shew that he was the son of the former and father of the latter. It was likewise proved, that Lady Langham, the last heir of the first baron Say and Sele, made a will, and appointed therein the claiment's father (Thomas) her sole heir and executor, stiling him her near relation.

After all those proofs, if they could be deemed so, though they carried along with them marks of internal conviction, the most difficult part of the whole case came under consideration.

It was stated, that the claimant was the lawful son of Mr. Thomas Twisleton, of Boughton, and of course the grandson of Colonel Fiennes Twisleton.

To prove this, a Mrs. Delafield, the claimant's aunt, was called as a witness. She said, she and her sister, the late Mrs. Twisleton, the claimant's mother, lived in the family of Twisleton, the father, that she had understood, though she was not old enough to remember, that Lady Langham was a near relation to the Twisleton family; that she, about the year 1726 or 1727, went with one of the family as a servant or companion to Yorkshire, where she remained nine or ten years, that, on her return to Oxfordshire, her sister told her in secret, that she was privately married to Mr. Twisleton; that she had then (1736) two sons born, the eldest since dead, about two years old, and the present claimant then a child in arms; that she shewed her certificate of the marriage between her and Mr. Twisleton, dated in 1732; that in the next year another son was born, the present colonel Thomas Twisleton, who is still living; and

that

that after the marriage had been for ſeveral years concealed, about eight or ten, Mr. Twiſleton publicly acknowledged it, and her ſiſter was as publicly viſited by people of fortune and rank, and, among others, the preſent Earl of Guildford; that the boys were called maſter Tom and Frank, &c. without the addition of any ſurname, till after the marriage was publicly declared; that they were ſent to ſchool to Banbury and Bloxham, and treated in every reſpect as gentleman's children.

A gentleman was examined as to the boys being ſent to ſchool; ſaid he had been at the ſame ſchool with them ſo early as the year 1740, that they were called Tommy, &c. till the marriage was publicly declared, which was not till the year 1744, when Mrs. Twiſleton was viſited by all the neighbouring nobility and gentry.

The Earl of *Guildford* conſented to be examined reſpecting the intimacy between his family and Mrs. Twiſleton, and confirmed every thing reſpecting it which had been depoſed at the bar.

The claimant's father's will was then read, in which was contained an account of his ſeveral ſons by name, and deſcribing the eldeſt of them to be a lieutenant in the firſt regiment of guards, and the other in the third, of which Lord Rothes was then colonel, and reciting his proviſion for his wife of three hundred pounds per annum, to whom he had been married about twenty-ſix years before. This will was made in 1758.

Sir *Robert Eden* was called to prove, that he was preſent on the 10th of September, we believe in the ſame year, in Germany, when the ſaid elder brother, lieutenant —— Twiſleton, of ſuch a regiment of guards, was wounded, of which wound he immediately died.

The certificate of the marriage was likewiſe proved, ſigned by one of the curates of the pariſh of Cripplegate, dated 1732; and it had been depoſed both by Mrs. Delafield and another witneſs, that the claimant was born in, or immediately about, the year 1735.

The Lord Chancellor. The evidence being cloſed, the *Lord Chancellor* roſe and obſerved, that the evidence adduced in proof of the pedigree, if it could be called one, though looſe, inaccurate, and wanting actual certainty or ſpecification, nevertheleſs carried with it ſuch an air of truth and authenticity, as ſhould induce him to forbear any animadverſion; ſo many well-deviſed fictions muſt have been created that it would do a

violence

violence to common sense and common probability, to presume that they were forged, and he was disposed to pass over this part of the case the more, as the only doubt he understood which lay upon their Lordships minds was respecting the legitimacy. It was necessary besides, before he proceeded farther, to take notice, that the late Mr. Thomas Twisleton, the claimant's father, presented a petition to the King in the year 1733, which was referred to the then Attorney-General, Willes, afterwards Chief-justice of the Common-pleas, upon which Mr. Attorney made his report, which was directly in favour of the claimant, and afterwards his Majesty referred said petition and report to that House, who proceeded on it till the Parliament was dissolved. The affair having thus dropped, the claimant, for family reasons respecting the noble Lord, who held the viscounty of Say and Sele, declined all farther proceedings.

As to the point of legitimacy, there was indeed some ground for doubt, but not sufficient in his apprehension to bar the claimant's title: there was a certificate of the marriage; there was the education of the children, and the provision made for the mother and her offspring, all confirming and corroborating the actual existence of a marriage between Mr. Thomas Twisleton, the father, and Mrs. Gardner.

There was moreover an indorsement on the back of the certificate, in the father's hand writing, authenticating in the most solemn manner the marriage; add to this circumstance, that there were motives which induced the father to conceal his marriage for a while; but as soon as that impediment (the same as prevented him from urging his claim to the peerage) was removed, he publicly acknowledged Mrs. Gardner for his wife, and she was visited in consequence of that acknowledgment by all the female, as well as male, people of fashion in her neighbourhood.

For these several reasons he should move, that the claimant being the heir general of the baron Say and Sele, created by letters patent to him and his heirs, 21st of James I. is entitled to said honours.

The committee was then dissolved, and the Chairman ordered to report said resolution immediately to the House.

Their Lordships then went to prayers, and the House being resumed, Lord Sandy's reported said resolution, which was unanimously agreed to, and an order made, that a report be made to his Majesty of the proceedings, that his Majesty may be graciously pleased to issue his writ, directed

to

to colonel Francis Twifleton, fummoning and enjoining his attendance in that Houfe, as baron Say and Sele.

June 22.

As foon as the private bufinefs was finifhed, their Lordfhips refumed the committee of the Ifle of Man bill.

The object of the bill was fhortly this: The late Duke of Athol fold the royalty of Man to the Crown, in the year 1765, for the fum of feventy thoufand pounds, referving to himfelf all his proprietory and manorial rights; in fhort, every thing he would have been entitled to as a fubject.

This agreement was fanctioned by an act of Parliament, as well to the providing an equivalent as to fecure to the parties, the Crown, the Duke of Athol, and the inhabitants of the Ifland, their refpective powers, authorities, claims, and privileges.

By the penning of this act of Paliament, the family of Athol deemed themfelves injured. The late Duke, for a fpecific fum, had agreed to part with the fovereignty of Man to the crown of Great-Britain, but they conceived, partly from the terms of the agreement, and partly from the conftruction put upon them by the King's officers in that Ifland, that he had been materially injured as lord of the foil, and as lord of the feveral manors of which it was compofed.

The prefent Duke therefore had recourfe to Parliament. A bill for that purpofe was introduced into the other Houfe, where it met with confiderable oppofition, but it at length made its way to this Houfe.

We thought it neceffary to give this fhort fketch of the reafons and motives of the bill, as it afterwards met with powerful opponents in the perfons of the Lord Chancellor and Earl Temple.

Several witneffes were examined to prove, that many of the rights propofed to be vefted in the prefent Duke of Athol by the bill, had never been enjoyed by the laft Duke, or any of his anceftors; and a witnefs being called to the bar to be examined, who had figned the petition againft the bill, a queftion of parliamentary law arofe, which occafioned arguments of confiderable length within the bar.

Lord Chancellor.

The *Lord Chancellor* was of opinion, that a petitioner againft a particular claufe of a bill was a competent witnefs refpecting every other part of it but that particular claufe.

Lord Loughborough.

Lord *Loughborough* contended, that a petitioner being a party, was incompetent to be examined (as in every other

cafe)

cases in his own cause. As to the distinction made by the noble and learned Lord who spoke last, that a petitioner was incompetent to be examined as a witness to any other clause than that in which he was interested himself, it might be so managed, without any great stretch of ingenuity, that if there were three or more petitioners, who all wished to be examined, that A. for instance, having petitioned against a particular clause, might be rendered competent to give evidence respecting another clause, and so with B. C. and D. till at length, by this management, the several petitioners might be admitted to give evidence against the whole bill, and thus the distinction taken by the noble Lord be as effectually defeated, as if no such rule of evidence had been in existence. He was clear in the first instance, that no witness could be examined in a cause in which, as a petitioner, he had acknowledged himself to be interested; that the distinction for admitting a petitioner to be examined against every part of a bill, but what he complained of was in his opinion a distinction without a difference, and of course he was of opinion, that the evidence now offered at the bar was totally inadmissable.

Earl *Mansfield*.

The Earl of *Mansfield* observed, that the noble and learned Lord who took the lead in the present conversation, had, he presumed, formed his ideas on the general rules of evidence established in the courts below; whereas in a great variety of cases there was nothing more different. The courts below adhered to certain rules and forms for the better regulating and conducting their proceedings, so had Parliament, and in many instances they bore not the least analogy to each other.

The rule of Parliament as long as he had any knowledge of its form of proceeding, had been to refuse the evidence of any witness who had petitioned against the bill, either in the whole or in part. The reason of this rule in his apprehension, was not as had been suggested by one or two noble Lords, because he was a party, or because he might have an eventual interest in the fate of the bill, but simply, because he had signed a petition against it. His Lordship mentioned several instances, in which this rule of Parliament had been strictly adhered to; and concluded with giving it as his clear opinion, that the witness was not competent to be examined respecting any part of the bill.

The *Lord Chancellor* replied in a stile rather bordering upon the ambiguous and ironical. He said, he had been so long accustomed to look up to the noble and learned Lord

who was so deservedly placed at the head of his profession, that he always heard with reverence and with no small degree of submission, whatever fell from his Lordship; and and whenever he had the misfortune to differ upon any professional point, with the noble Lord, he had a constant predisposition to suppose that he himself was wrong, and the noble and learned Lord right. He had been long in the habit of paying almost an implicit deference to every thing which fell from his Lordship, and to bow to it as the highest authority, having rarely listened to him upon discussions of questions of law, in which he did not bring home the fullest conviction to his mind.

These were his sentiments nakedly given, not with any view or intention of adulating the noble and learned Lord, but merely as a matter of justice.

In what he said now, he merely adverted to the judicial character of the noble and learned Lord in the court of King's-Bench; but however implicit every opinion of his as Chief-justice of that court was acquiesced in, it was not always so very current in Parliament, nor relied upon with that degree of confidence. It was only therefore as a legislator that he presumed to differ from the noble Lord, and he could safely oppose to what had been asserted by his Lordship, what frequent experience had brought within his own knowledge, while he had sat in Parliament, and acted as counsel at the bar of both houses.

His Lordship, after a variety of arguments to prove the competency of the witness offered to be examined, affirmed once more, as long as he knew any thing of Parliament, either as a member or counsel, the uniform custom had been to admit a witness to give evidence against every other part or clause of a bill but that against which he had petitioned. Upon the question put by the chairman, the witness was rejected as incompetent without a division.

Sir George Moore was then examined. His evidence went to prove, that several of the reservations in the bill were not supported by custom or usage. He said he had been Speaker in the Island upwards of thirty years. The fisheries deemed royal were very different from those deemed manerial. Within the former description came the duty or portion of all herrings caught upon the coasts of the Island, and at sea; and as to the game, he never understood that the kings of Man, as sovereigns or lords of the soil, claimed any other but hawks or hearns. Partridges had got into the

Island

Island so early as the year 1736, and since then, grouse and moor-game, but he never knew that they had been claimed by the Athol family as a right annexed either to the sovereignty or lordship of the Island.

The counsel then went at large into the case of his clients, and pointed out a great variety of hardships they must undergo should the present bill pass into a law; contending, that the herring custom appertained to the royalty, and not to the seignory of the Island, and that consequently, while the principle of the bill went to divest out of the Crown those rights for which it had given to the late Duke of Athol a very valuable consideration; the people would on the other hand, feel themselves most grievously injured and oppressed by those middle claims, set up in the character of lord of the soil.

Earl *Bathurst* observed, that the bill in its present form appeared to him extremely complicated; that many solid objections had been made at the bar against several of the clauses, which in his opinion, should the bill proceed, would require fuller investigation. By saying this, he did not wish to be understood, as giving an opinion one way or other, only he thought it his duty to propose his intended motion, with his motives for making it, which were, "that the House be resumed, and that the chairman do report progress."

Earl *Bathurst*.

Earl *Temple* said, he had constantly attended since this business came before the House, and had given every attention to it to which it seemed to be entitled. He thus acted, for two reasons; first, under a call of general duty, as a member of that House, but more particularly as a near and dear relation of his [his father, the late George Grenville] was the person, who in the character of First Commissioner of the Treasury, was presumed to have negociated the affair from the beginning to the final conclusion. He could not, he said, abstain from expressing his astonishment, that none of the law officers of the Crown took any part in the business. It was surely their duty to see that the rights of the Crown were not invaded; and it would be but candid in them to acknowledge, had they thought so, that the agreement made between the Crown and the Duke of Athol, intrenched on the rights of the seignory; though nothing was originally meant to be parted with or purchased, but those deemed royal or sovereign.

Earl *Temple*.

He fancied great attention had been originally paid to this business by the law officers at the time the agreement

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took effect; and if he was well informed whenever doubts subsequently arose, no less diligence had been resorted to.

The opinions of the Attorney and Solicitor generals, in 1765, and upon various occasions, if he was well informed, since held a very different language from that contained in the present bill. He had moved for some of the most material of those papers some days since, but they had not been till that very day produced. Where the fault originated he would not pretend to say; but till they were on the table for the perusal of their Lordships, and they had time to examine and digest them, he did not see well how their Lordships could proceed farther. The objects of the bill, when viewed in detail, might appear but trifling, but the precedent at least struck him as dangerous, because it might lead to the surrender of other rights of infinitely greater importance, and operate as an encouragement to other individuals, to come to Parliament, to urge claims equally inimical to the prerogative of the Crown and the rights and privileges of the people.

Viscount *Stormont*.

Viscount *Stormont* presuming, that the noble Earl had insinuated some degree of censure on the King's servants in that House, for not having taken proper steps to enforce their Lordship's order of Monday, in conformity to the noble Earl's motion, said, there was no possible blame imputable to them. The address was presented to his Majesty as soon as it conveniently could. An order was made out to the proper officer with all suitable expedition, and if the papers had not been produced, there was neither neglect or delay on the part of those whose duty it was to see that said order was complied with. He did not wish at present to enter into the merits of the bill, when the proper time for delivering his sentiments on the subject should arrive, he was determined to give his opinion free from prejudice or partiality.

Earl *Temple*

Earl *Temple* assured the noble Lord he had wholly misconceived him; he never meant to insinuate the least degree of censure on the King's ministers, much less on his Lordship respecting the circumstance adverted to. He never imagined that the papers had been kept back, through design or neglect, or that ministers entertained a wish either way, than so far as justice might be concerned.

It was natural for him to betray an anxiety on the occasion, not from a desire of upholding what was wrong, but an earnest desire to scrutinise to the bottom, how far a deceased relation of his had acted agreeably to the sense of the contracting parties. He protested at the same time, if upon a fair and full investigation of the grounds and objects of that bar-

gain,

gain, it should be found, that the late Duke of Athol had, through inattention or from any other cause, parted with at that time more than the agreement itself fairly and liberally imported, so far was he from wishing to injure or oppress any man, be his character or situation what it might, that he should be one of the first who would use his best endeavours, to rectify the mistake, in order to put both parties into that situation in which they were entitled to stand.

Lord Chancellor.

The *Lord Chancellor* observed, that the bill was a private one in every thing but name. Whether it was such a bill as ought to pass, he was not prepared to say; because in truth, after all he had heard on the subject in that House, and at the bar, he was so dull as not to be able to comprehend it.

As yet, besides, their Lordships could not pretend to form an opinion, upon having heard counsel and evidence in behalf only of one of the parties. When he heard the whole of what was to be offered on both sides, he would endeavour to make up his mind, and come to an impartial decision.

He could not avoid however taking notice, that the bill came rather under an unfavourable appearance, by being brought forward at so late a period of the session, considering its importance, and the great number of persons who were to be affected by it. It was absurd to expect a full or even a middling attendance all this summer in that House. The members fatigued and wasted by a constant application to public business several months, had gone to their country-seats for recreation, or to attend their private concerns. He would not even for a minute, harbour an idea that such a conduct on the part of the friends of the bill, had originated in unfair or impure motives, on a supposition, that a bill might be carried through a thin House, which would never have made its way through a full one. He had much too high an opinion of the honour and integrity of the noble Duke, who was principally concerned in the event of the bill, to entertain the most distant suspicion of the kind; but still truth obliged him to declare, that however clear the exception might be in the present case, the bringing in bills at the tail of a session, wore in general a very doubtful aspect. There was another bill of very singular importance as he understood, now making its way to that House (new marriage bill) which if upon no other account, he was determined to oppose upon the very ground he had been stating; and indeed, so long as he should sit in that House, the bringing in of a bill of importance, just at the eve almost of a prorogation, would always furnish him with one general argument, against entertaining it at all at so unseasonable a period.

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He begged their Lordships would recollect, that this was the 22d day of June, that Parliament would probably be prorogued in a few days; and that under such circumstances, after consulting themselves fairly, he beseeched them to determine, whether this was a season proper for the discussion of bills, when, at a moderate computation, it might with strict justice be affirmed, that scarcely one-third of the members of both Houses were in town.

In respect of the observation, made by the noble Earl who spoke last, relative to the law-officers of the crown. If they had not attended, it might have proceeded from very proper or prudential motives; if they were called upon however for an opinion, from his knowledge of the gentlemen alluded to, he made no doubt but their decision would be founded in wisdom and justice.

The farther consideration of the bill was deferred to the 25th instant.

The other order of the day was then read, for the third reading of the bill, "for rendering valid certain articles of agreement between the Archbishop of Canterbury and the Earl of Radnor, touching the enfranchisement of the impropriate rectory of Folkestone, in the county of Kent, under certain conditions therein mentioned."

Lord Chancellor.

The *Lord Chancellor* opposed the third reading, in a speech of considerable length, in which he endeavoured to prove, that the compensation, proposed to be given by the noble Earl, was not an adequate one; observing likewise how dangerous it was to establish a precedent which might lead to numerous bargains of a similar nature, which would in the end tend to the stripping the church of a considerable part of her patrimony.

Earl of Radnor.

The Earl of *Radnor* replied; and after stating a variety of computations affirmed, he would not have a shilling more than five per cent. for his money.

The question was at length put, when the *Lord Chancellor* divided the House. Contents 5; not-contents 9.

The bill being thus lost, the House rose at eight o'clock, and adjourned till Monday.

June 25.

As soon as the usual business was finished, the order of the day was read, for the House to go into a committee on a bill, entitled an act "To render valid certain marriages exercised in certain chapels, in which banns had not been

 usually

usually published, before or at the time of passing an act of the 26th of George II. for the better preventing clandestine marriages."

Lord Sandys having taken his seat at the table, the Earl of *Coventry* rose and said, he did not mean to oppose any part of the bill, but as a member of that Quarter Sessions, who, in the case of a pauper, were the occasion, by the decision they came to; in respect of that pauper, there were some difficulties which rested on his mind, which he anxiously wished to have removed.

Earl of Coventry.

According to the act of the late king, no marriage could be valid which should not be solemnized in some church or chapel, where it had been usual to publish the banns of matrimony. There were several chapels at that time where divine service had been performed, and a much greater number erected since the year 1752, which did not answer the description; indeed it was impossible the latter could, the same not having then been built.

The clause in the marriage act, however, admitted of a doubtful construction. When therefore the pauper, whose parents were married in such a chapel, came before the court, it was the opinion of the majority of the bench at the Quarter Sessions, among whom he had the honour to make one, that the case of the pauper was singularly severe; upon which, whether right or wrong as to the point of law, the latter of which he presumed to be the case, the Bench determined, that the issue of this marriage, the pauper was entitled to a settlement, and they decided accordingly

From this decision of the Quarter Sessions the party appealed to the court of King's-Bench, where the contrary was determined to be law. This decision spread a general alarm throughout the whole kingdom; as it clearly decided, that all marriages solemnized in chapels, erected since the year 1752, were illegal, and of course dissoluble at pleasure; and that the issue of all such marriages would in law be deemed illegetimate.

A noble Lord in the other House, [Beauchamp] whose zeal in the cause of humanity never sleeps, stepped forth on the occasion, and produced the bill their Lordships were about to take into consideration. He begged pardon, he thought so much by way of explanation would not be improper; but the difficulty he meant to state was this: that similar cases might come before the same judicature, in which event the Quarter Sessions would be at a loss in what manner

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to act. On the one hand, the present bill was framed in order to legalize such marriages; on the other, the determination of the court of King's-Bench, for aught he knew, would operate as in the case of the pauper upon all instances, where the matter was already in the course of legal process. He was the more solicitous to have the advice of persons, better able to judge than himself, because he had more than once, within a very short period, heard a noble and learned Lord express himself rather unfavourably in respect of courts of Quarter Sessions in general. As a member of a court so constituted, he must take the liberty to seek the noble and learned Lord's advice, in order at least to remove one ground of complaint; and to beg the favour that his Lordship would strengthen their weakness, and lighten their darkness. Under such instruction he should return to the country, and resume as usual the functions of a magistrate with confidence, because, acting upon the opinion of so high an authority in law and jurisprudence, all apprehensions of error or mistakes would be removed.

Lord Chancellor.

The *Lord Chancellor* said, as to the question put to him by the noble Earl, he fancied he had it in his power to do away his Lordships doubts. The purposes of the present bill were openly declared in the title to be what they really were, and the remedy proposed was a special one, directed to the evil therein described. In every other respect, the bill left the law of the 26th of the late King just where it found it. The case, as he apprehended, was this: that clergymen, ignorant of the law, had married persons contrary to the provisions of said statute, which provided, that all marriages, after such a day, should be solemnized in a church or chapel, where it had been customary or usual to publish the banns of matrimony; clearly then, as he apprehended, if any case similar to that of the pauper's, mentioned by the noble Earl, was now depending, the present bill, if passed into a law, would immediately operate upon such case, and put a stop to all farther proceedings, unless their Lordships meant to make a particular exception to the contrary.

As to what the noble Earl said, respecting the slight or contempt which he had heard thrown upon courts of Quarter Sessions in that House, it could only bare relation to him, and had arisen probably from something which had dropt from him in debating some question, where that court and its jurisdiction came to be considered. He thought he had explained himself sufficiently before, but he should now take

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the liberty to repeat, what perhaps was not so perfectly understood or attended to at the time. He did assure the noble Lord, that he had not the most distant intention to insinuate, much less make a direct charge, against so respectable a body of noblemen and gentlemen, many of them of the first rank and character, as sat to dispense justice as magistrates throughout the kingdom: he was perfectly persuaded of their worth, honour, probity, and abilities. The only objection made by him, was to the nature and extent of the jurisdiction, not to the mode of exercising the powers vested by law in the noble and honourable persons alluded to. It was a jurisdiction, he would acknowledge, necessary in many cases, but it was a jurisdiction, which for certain purposes, and when resorted to upon certain occasions, was totally incompatible with the whole frame of our constitution, particularly so in all cases respecting property. Whenever a question of that kind was at issue, it ought, in his opinion, to be determined in some one of his Majesty's courts of law, and that by the verdict of a jury.

The Chairman then proceeded to read the several enacting clauses, but was interrupted by the Lord Chancellor when he read that for indemnifying all clergyman who had offended against the act of the late King, previous to the present bill taking effect. The clause objected to was, "And be it further enacted by the authority aforesaid, that all parsons, vicars, ministers, and curates, who have solemnized, or shall solemnize, any of the marriages which are hereby enacted to be valid in law, shall be and are hereby indemnified against the penalties inflicted by the said recited act, upon persons who shall solemnize marriages in any other place than a church or chapel, in which banns had been usually published, before or at the time of passing said recited act." His Lordship observed, that this clause was manifestly beside, or different from, the avowed purpose of the bill, which was merely to legalize marriages, which by a late determination of the Court of King's-Bench were deemed invalid. He should therefore oppose it on that ground, if he had no other objection; but he had still a much more solid reason for giving it a most marked and direct opposition.

He was ready to allow, that agreeable to the present principle of the bill, that of giving relief in all cases, where chapels had been erected since the passing of the act, the clergyman stood forth in the character of an innocent man.

Whenever that should appear to be the case, he made no doubt but he would meet every possible indulgence from the Crown, which in his apprehension was the only proper place to apply; but as he ever had, so he ever would upon every occasion that might present itself, endeavour, as far as he was able, to mark out and keep separate the powers and rights of the legislative and executive branches of the state. It was competent for Parliament to enact laws, to describe the crime, and annex the punishment. It was a prerogative of the Crown to mitigate and soften the rigour and severity of the law, where the person offending had transgressed through ignorance or inadvertency, not design. To apply the truth of those principles to the case before their Lordships, it was only necessary to observe, that as the Crown had the power, so he was sure it would have the will, to interpose and administer relief, whenever relief was sought, and the person applying should make it appear that he had not wilfully offended. On the other hand, if the present bill should pass into a law, the innocent would be confounded with the guilty; the real, premeditated felon, with the person who imagined when he was acting illegally, or rather criminally, that he was then discharging a very proper duty in the way of his profession.

On the whole, the trouble would be but trifling; the innocent man would have nothing to fear, and the guilty man would still remain under the terror of depending punishment, should he be either detected, or, upon application to the Crown, be not able to shew that his offence had originated in ignorance.

Lord Coventry. Lord *Coventry* wished to amend the clause provisionally, that the same had arose from ignorance or inadvertency, and urged some arguments in support of the amendment.

Lord Chancellor. The *Lord Chancellor* said, that he would never consent, that the Parliament should intrench upon the known rights and constitutional exercise of the executive power. He presumed there was not a noble Lord who heard him, that would stand up an advocate for felony, not accidental, or incidental; but felony founded in guilt, an intentional transgression against the laws of his country. If not, then there was no occasion for the clause mended or unamended; for the innocent, on a proper application and facts stated, might be sure that the Crown would mitigate the severity of the law in respect of them.

Lord

Lord *Dudley* argued very strenuously in support of the clause. He believed there were various cases which might be adduced where persons had made themselves liable to punishment for having solemnized marriages contrary to the letter of the act. He by no means saw that the bill would usurp or encroach upon the rights of the Crown; it would save the Crown, and those who might think it necessary to apply to it, great trouble and expence, and infinite vexation; and if there were any such persons as the learned Lord described, of which he retained his doubts, they could be but few in number; and even in that case, it would be perfectly consonant to the spirit of the laws of England, and that well known maxim, that it is better twenty guilty persons should escape, than one innocent person suffer, which must be the case though mercy should be extended to them; for in his opinion the very necessity of the application, and the progress of it, might be well deemed a species of punishment.

Ld. Dudley.

The *Lord Chancellor* re-worded several of his former arguments; to which he added, that it was the duty of every clergyman to be thoroughly acquainted with the law in question, because it was only under the special authority of that law that he could undertake to perform the marriage ceremony; ignorance or inattention, in respect to the authority under which he acted, was in some degree criminal, though not perhaps to the extent it would, could it be proved that he acted from sinister or interested motives.

Lord Chancellor.

If he understood noble Lords right, the clause was purposely framed to give relief to persons who had solemnized marriages in chapels which had been erected since the passing of the law; but though nothing was more easy than to assert generally, that clergymen in every instance of the kind acted ignorantly or in advertently; he believed in his conscience it might be easily proved, that many of them had acted from motives originating in avarice and self-interest.

The erecting of chapels was pretty well known to be a builder's job: the chapel was raised or contracted for, no matter which; subscriptions were sought; it was properly furnished, and divine service was performed in it. The next object was to enlarge the receipts as much as possible; and what method better calculated to effect that, than by encouraging young people to come there to be married, and defrauding thereby the mother church of her fair and legal dues? All this, it was barely possible, might proceed from

 ignorance;

ignorance; but he believed, without ſtretching the imputation too far, it was much more likely to proceed from intention, and from a moſt corrupt and fraudulent intention too. He was entitled to preſume as well as the noble Viſcount. He was entitled to ſay, that not only the law had made the act felony, but that it was morally, as well as legally, criminal.

Ld. Stormont

Lord *Stormont* confeſſed himſelf totally ignorant of the buſineſs, farther than what he had collected in the courſe of the debate; and he was confident it amounted to an *ex poſt facto* law, for pardoning an extenſive deſcription of felons, which would be an uſurpation of one of the deareſt prerogatives of the Crown, that of adminiſtering relief to the innocent, and even of extending in ſome caſe mercy to the guilty. Such being his opinion, he was, he ſaid, determined to vote againſt the clauſe.

A long converſation acroſs the table enſued between the Lord Chancellor, and Lords Dudley, Coventry, and Radnor.

At length the queſtion was put, and the committee divided. Contents for the clauſe, as it ſtood in the bill, 7; not-contents 8. Dr. Hurd, biſhop of Worceſter, divided for the clauſe, but his Lordſhip not being robed, the teller refuſed to count him in; we preſume, agreeably to a ſtanding order of the Houſe.

The bill was then read through, the blanks filled up, and the amendments ordered to be received next day.

The Houſe roſe at ſix o'clock.

June 26.

This day the Houſe reſolved itſelf into a committee on the Iſle of Man bill. As ſoon as Lord Sandys had taken the chair, Mr. Lee was heard as counſel for the bill, which he did very fully, in a ſpeech of nearly two hours. He was followed by Mr. Erſkine on the ſame ſide, who offered to bring evidence to the bar in proof of ſeveral of the facts ſtated in the argument of his learned leader.

The Lord Chancellor.

The *Lord Chancellor* moved, that the counſel do withdraw; and among others, ſubmitted to their Lordſhips the following obſervations:

The learned gentleman, who ſpoke ſo ably at the bar, had endeavoured to make out his client's caſe in a very ſingular manner. He ſcarcely ſaid a ſyllable in behalf of the rights aſſerted in the bill, but confined his arguments ſolely in combating thoſe of his antagoniſts, a ſpecies of perſuaſion which,

which, with their Lordſhips, who ſat there as the guardians and ſupporters of the public rights of the Crown, as well as the individual rights and priviledges of the ſubjects in the Iſle of Man, he preſumed would never prevail. As to the event of the bill itſelf, he profeſſed himſelf totally unbiaſſed and indifferent, farther than his anxiety led him to do what was right, and that only.

He was as ready to acknowledge as the moſt ſanguine friend of the noble Duke, within or without that Houſe, that in making the agreement on the behalf of the Crown with the noble Duke's father, that the bargain ought to have been liberally made, and the noble Duke fully recompenſed. Whatever the prevailing opinion was at the time, at preſent ſignified very little. It was with an intention of promoting great public benefit; and ſince Parliament had adopted the idea they did on the occaſion, ſuch an agreement ought not to be conducted with that limited and parſimonious hand which governs property in tranſactions of a private nature.

As to his own part, however ſingular ſuch an opinion might found, what the public purchaſed of the late Duke of Athol ſeemed to him of very little conſequence, no more in his apprehenſion than certain rights and priviledges incident to the proprietor for the time being, as firſt magiſtrate and as lord of the ſoil; and which his Majeſty's ſervant, in the year 1765, very wiſely deemed to be improper to be longer veſted in the hands of a ſubject, who exerciſed thoſe rights independent of, and uncountrouled by, the Britiſh Parliament.

That there were a variety of inſtances, previous to the year 1765, in which the Lord of Man, and thoſe who lived under his government, were amenable and controulable by the Britiſh legiſlature, he preſumed would not be denied, becauſe Parliament had at various times exerciſed a ſupreme, controuling power over the iſland. One inſtance he ſhould mention ſo early as the reign of Henry VIII. which would ſupply the want of every other proof on the ſubject.

The Parliament which paſſed the ſtatute for aboliſhing monaſteries and abbies, and veſting the lands which belonged to them in the Crown, was extended to thoſe religious houſes as well in the Iſle of Man as to England and Wales; and as a proof how little the ſovereign of Man affected the real ſtile of a monarch, the Earl of Derby, who then poſſeſſed the royalty, inſtead of exclaiming againſt the uſurpation, or

complaining

complaining of the injustice or oppression of such a stretch of foreign power, actually became lessee to the Crown, for the profits arising from the dissolved abbies and monastries within his own dominions.

Therefore in his opinion, there could exist no just ground of complaint against Parliament in the year 1765, though they had carried matters with a much higher hand than they really had done. All that Parliament stood pledged to perform was, to what she is always obliged to do; to render justice to the proprietor, by giving him a fair, equitable, and liberal compensation, for what he really parted with.

Much had been urged both within and without the bar, in order to prove, that the family of Athol had been injured; that they had been forced into a surrender of what they deemed inalienable, by the strong hand of power; and that the agreement after being forced upon them, had not been faithfully adhered to on the part of the Crown; indeed they were the only two matters urged, which bore the appearance of argument. The first, he believed, he had clearly placed in a proper view, and as to the last, which was the immediate ground of the present bill, it remained to be proved. Nothing like proof had been offered, and till he was better convinced than by a general conversation at the bar, he must confess, he found himself obliged to draw a conclusion exactly the reverse.

Much had been said likewise about waifts, strays, manerial rights, &c. whereas it appeared to have no real foundation whatever; those rights which had been thus claimed, having at different times, and upon various occasions, been granted to the lords of manors, and of course divested out of the Lord-paramount.

His Lordship, after adverting to a great variety of circumstances of a similar nature, reminded their Lordships, that they were now preparing to enter into the farther consideration of the bill on the 26th of June; that they had yet proceeded but a little way in it; that therefore, in his opinion, to enable them to come to a true judgement upon a subject in itself complex, and rendered much more so by the manner in which it had been conducted, would take much more time than they could possibly bestow on the subject at so very advanced a period of the session.

Duke of *Athol.*

The Duke of *Athol* said he perfectly coincided with the noble and learned Lord, that the bill was of singular importance, and claimed every degree of attention which bills of the

the kind were naturally intitled to; for his part, there was not a noble Lord who heard him, that more ſincerely wiſhed every particular clauſe, even every particular ſentence or paragraph in the bill, was watched with the moſt vigilant eye, and examined in the moſt minute manner; becauſe, the more pains there were taken to develope the real purport and objects of the bill, he was perſuaded, the more friends and ſupporters it would have in the Houſe.

It was his intereſt therefore, to embrace the idea which had been thrown out by the noble and learned Lord, as he had not the good fortune to bring home conviction to his Lordſhip's mind, by any thing which had been offered by his counſel at the bar, or by any other means in the courſe of the progreſs of the buſineſs. He begged leave to aſſure the noble and learned Lord, that he was as ready as his Lordſhip to poſtpone the farther conſideration of the bill till next ſeſſion, as by that time, he made no doubt, but he ſhould have it fully in his power to bring ſuch proofs as would convince their Lordſhips in the moſt clear and inequivocal manner, that the bill was ſtrictly founded in juſtice, and every way worthy of their Lordſhips approbation.

Earl Bathurſt.

Earl *Bathurſt* obſerved, that the noble Duke had held a language every way becoming his high rank and dignity; his ſo readily cloſing with the ſentiments of the noble and learned Lord, had done him infinite credit, and his candour, as to the mode of acceptation, could not ſurely be ſurpaſſed. He perfectly agreed with the noble and learned Lord, that the ſeaſon was rather too far advanced to come to a deciſion of ſuch importance, and in which it was apprehended, the rights and property of ſo numerous a body of people might be materially affected. He would therefore, in conformity to the apparent ſenſe of the Houſe, move, "that the chairman do leave the chair." The committee was accordingly diſſolved, and the buſineſs of courſe poſtponed till the next ſeſſion of Parliament.

June 27.

As ſoon as prayers were over, the order of the day for the Houſe to reſolve itſelf into a committee on the Coventry Election Bill, was read; Lord Sandys accordingly took the chair of the committee.

An introductory converſation took place, previous to any diſcuſſion of the bill, in which ſeveral Lords took a part; among

among the rest, the Lord Chancellor, Lord Loughborough, and the Lords Temple, Radnor, Dudley, and one or two other.

The Chairman proceeded through several clauses till he came to the following. — "And be it further enacted by the authority aforesaid, that from and after the passing of this act, no greater fee than three shillings, over and above the expence of the necessary stamps, shall be demanded or taken of any person or persons, who shall be admitted to his or their freedom at any such council."

The Lord Chancellor.

The *Lord Chancellor* objected to this clause on several grounds, but he principally contended, that the rights and properties of individuals should never be taken away by an act of the legislature, unless it was the express, avowed, and particular purpose and object of the bill so to do; and even in that case, when such an alteration in the laws in being became necessary, it should either be proved, that the right or property so exercised or possessed was either usurped, and had no legal foundation to support it; or, that having a legal foundation to support it. Provisions should be made in the bill, which took those rights away, to make a full and equitable compensation.

The city of Coventry enjoyed certain corporate rights, and emoluments of a particular nature were annexed to some of those rights; among others, which was the particular case that was or would be affected by the present clause, the corporation received certain fees from all persons on the taking up their freedom. Those emoluments, however applied, were understood to be designed for the benefit and advantage of the corporation; but whether the fees so paid were so applied to the general uses of the corporation, or annexed to the offices enjoyed by certain members of the body politic, the effect was the same; they could not be taken away by a side wind; they must be first proved in a court of law to have no legal existence; or if divested out of the corporation, or any of the individuals who composed it, by an act of the legislature, it was incumbent upon the legislature to give them a fair and equitable equivalent.

Lord Loughborough.

Lord *Loughborough* controverted the general doctrine, and denied the application of it to be just in the present instance, though the doctrine itself had been maintainable. He contended that the righs of a corporation were not to be deemed personal, or intitled, if taken away, to be compensated for. They were intended for the regulation of police and good government;

government; they were consequently under the controul and ultimate direction of Parliament, whose special business and duty it was to watch over and take care that those delegated or subordinate powers vested in corporations should not be abused or directed to the effecting improper purposes.

Parliament were supposed to act, on the present occasion, both correctively and preventatively; to correct the evil in the first instance, and to prevent the return of it in time to come. The case in fact, his Lordship said, was this: In ancient times, so late as the reign of queen Elizabeth, the admission fine or fee paid by a freeman on admission was but six-pence. In the year 1734 this was raised (or recognized by a public act of the corporation) to six shillings and eight-pence, including the price of the stamp. In the year 1754 the corporation made a by-law, or regulation, to make it ten shillings and six-pence. The present bill had done no more than reducing it to a sum equal to what had been fixed by the regulation of 1734, independent of the stamp.

He begged leave to make two observations upon the consequences of rejecting or altering the present clause; one was, that by raising the fine at pleasure, it was acknowledging a right in the corporation to levy money upon the subject, which was what no body of men had a right to do, unless authorised by law; but more particularly, if the present clause was amended, it would, in fact, most probably defeat the whole bill, and that might be the design of the present opposition. If noble Lords were willing to run the risk of losing the bill intirely, for the sake of making the amendment, under the circumstances he had described, he, for one, should be for supporting the clause as it now stood.

Lord Chancellor.

The *Lord Chancellor* warmly urged his former argument; and said, if the rights and properties of men were to be decided upon, and disposed of in that House, or elsewhere, in their legislative capacity, there would be then an end to all law and justice. He denied that the point under controversy to be a matter of mere police and regulation, upon which Parliament, in its legislative capacity, was competent to decide; it was a species of corporate property, created by prescripiton or positive law, derived under the charter. If the corporate powers were abused, there was a remedy at law; if they were not, it became necessary to alter or modify them. The emoluments arising or accruing under this legel title, if taken away, challenged compensation, nor could be divested out of the corporation, without manifest injustice. He was ready to meet the noble Lord fairly; he was willing to allow, that

the object of this clause was, to prevent a supposed evil, that of preventing persons intitled to take up their freedom, by increasing the expence of admission, to a sum beyond the ability of the person wishing to be enrolled. In that point of view, he had no objection to let the clause go in its present form, if its friends would consent to have a proviso enacted, to save the rights of all the parties.

Duke of Grafton. The Duke of *Grafton* totally coincided with the learned Lord who spoke last, and recommended an amendment, saving the prescriptive and other rights of the corporation, and the persons claiming to be admitted.

Lord Chancellor. The *Lord Chancellor*, after passing some very handsome compliments on the noble Duke, respecting his constitutional knowledge; and his sacred regard for the due and impartial administration of justice, adopted the words of the noble Duke, and moved them by way of amendment.

Duke of Chandois. The Duke of *Chandois* spoke against the clause, and in favour of the amendment, and condemned the principle of the bill, which stated a variety of acts of a criminal nature, against persons acting in the corporation of Coventry, and yet no one proof of the presumed criminality had been made out, nor one person punished, in consequence of such misbehaviour.

Ld. Dudley. Lord *Dudley* said, the corporation had no right to make by-laws, which went to raise money on the citizens; and that no custom was good, the origin of which could not be traced, which was plainly proved from the corporation books to be the case in the present instance.

Lord Sandwich. Lord *Sandwich* spoke on the same side; said, though the amendment made by the noble and learned Lord could be supported, any alteration in the money part of the bill would probably prove fatal to it in the other House. He should on that ground be against the amendment; not but he was of opinion, independent of that consideration, the amendment was totally unnecessary.

After some farther consideration, the question was put on the Lord Chancellor's amendment, and the committee divided; contents 11, not contents 15; the clause was therefore carried.

Ld. Temple. Lord *Temple* moved an amendment relative to the specification of a penalty of 100l. to be paid by the corporation on refusing to admit any person duly intitled to take up his freedom,

dom; which, after a short conversation, was negatived; the contents being 9, not contents 16.

His Lordship proposed a second amendment, which was negatived without a division.

The Duke of *Chandois* then moved, that the Chairman do leave the chair. This produced a long conversation of little moment.

Duke of Chandois.

The Earl of *Sandwich* opposed the motion very warmly, and endeavoured to shew the extreme necessity there was for passing the bill. The city of Coventry, whenever an opposition arose, had, time immemorial, been the scene of the most dangerous and daring riots, lives had been lost in many instances, and great mischiefs had ever attended the elections. The late one, had if possible surpassed all that went before. Under such circumstances, he wished noble Lords to consider whether it was not full time for the legislature to interfere; or whether the rights of election were to be sacrificed to brutal rage and violence? In fine, whether their Lordships would think proper to perpetuate the injury and injustice of such proceedings, and the disgrace which would necessarily attend them? He should first mention one circumstance before he sat down, to demonstrate with what rage and violence those riots were conducted. It was at one of them, a noble Lord, a member of that House, (Denbigh) had been dragged through the public streets and channels of the city, and otherwise maltreated, to the manifest danger of his life.

Earl of Sandwich.

The Duke of Chandois's motion was negatived, and the clauses were read without meeting with any farther opposition, and immediately reported; and the bill ordered to be read a third time.

The House rose at half after six, and adjoured to the next day.

June 28.

A bill from the other House, for giving a compensation to Doctor Smith for his attendance, in his medical character at the several prisons in and immediately about this metropolis, being first presented, and read a first time, Viscount Dudley moved, that said bill be read a second time on Thursday next.

The Duke of *Chandois* said, he had many solid objections to make against the bill, and without entering into a detail, he totally disapproved of its principle, which called upon their Lordships without any reason whatever to throw away

Duke of Chandois.

 twelve

twelve hundred pounds of the public money. He ſhould therefore reſiſt the bill in the firſt inſtance. His Grace accordingly moved, that the bill be read a ſecond time on Tueſday four weeks.

Ld. *Dudley.* Lord *Dudley* in a reply, of rather conſiderable length, went into the whole of the merits of the bill, and of the conduct of Doctor Smith throughout the whole buſineſs.

Duke of Chandois. The Duke of *Chandois* ſaid, if he had retained a doubt relative to Doctor Smith's claim upon Parliament, the noble Viſcount had furniſhed him with the moſt cogent reaſons for adhering to his former opinion. Doctor Smith, ſays the noble Viſcount, did not thruſt himſelf officiouſly into the buſineſs; he did not ſeek to perform voluntary ſervices with a view of being afterwards rewarded. No; Doctor Smith, ſays the noble Viſcount, was prevailed upon to viſit the priſons at the requeſt or deſire of a member of the other Houſe. He ſhould be glad to know the member's name who had undertaken to employ the Doctor? for he was yet to learn, what authority a member of the legiſlature had to employ any man, and as it were to pledge the faith of Parliament for his ultimate reward.

He begged noble Lords to reflect on the preſent ſtate of our national affairs, and ſee fairly, whether this was a time to add to the weight of taxes and loans, the people were neceſſarily obliged to ſuſtain, and the ſtill greater burdens which muſt be the conſequence of a war which at preſent held out not the moſt diſtant proſpect of peace. He believed there was not a ſingle noble Lord that heard him, who would not join in one voice in recommending the moſt rigid œconomy. He called the whole a job, calculated to ſerve a favoured individual, at the expence of an exhauſted public, already bleeding at every pore.

Ld. *Dudley.* Lord *Dudley* ſaid, he perfectly agreed with the noble Duke reſpecting the extreme neceſſity there was for adopting the moſt rigid œconomy in all financial concerns. The principle was not to be controverted, but it might nevertheleſs be improperly applied, as was the caſe, if he apprehended right, in the preſent inſtance. Money was always judiciouſly and properly laid out when it was given as the reward of public benefits actually received, that could not be laviſhed or thrown away, which was given as a reward for ſervices actually performed; that this was the caſe of Doctor Smith, no perſon, he preſumed, entertained the leaſt doubt; he was therefore for having the bill go to that ſtage in which it would

would be competent to give proofs of what now could only rest upon assertion.

The noble Duke called the bill a job; he intreated their Lordships not to be caught by a popular word. The name of job, without any proof of its being so, had often turned out to be fatal; for a deaf ear was instantly turned to arguments, no matter how cogent and conclusive, and all appeals to reason and facts were instantly at an end. After some farther observations, merely personal, stating the part he had taken in the business, he hoped their Lordships would at least endeavour to be convinced that the bill was not a job, and not by taking the charge for granted, reject the bill before it came to a second reading.

Duke of Chandois.

The Duke of *Chandois* rose to explain; he said he never imagined, much less insinuated, that the noble Viscount had any personal interest or concern in the fate of the bill, but be it a job or not, he was determined to resist in every shape, any attempt however specious, which should have for its object the misapplication of the public money.

Earl of Radnor.

The Earl of *Radnor* observed, that there was one point which must prove fatal to the bill, it there existed no other objection whatever, and which in his opinion was impossible to get over. The services said to have been performed, as stated in the bill were, that Doctor Smith had visited, attended, and otherwise assisted the sick in the several prisons within the counties of Middlesex and Surrey. There was not one of their Lordships who did not well know that services of this kind were rewarded and defrayed by the respective counties. He could therefore see no reason why the whole kingdom should be obliged to contribute to the payment of expences incurred within those two counties, unless the rule were meant to be made general and extend over the whole kingdom; that not being yet declared, it was, in his opinion, little better than insulting Parliament, to make provision for what had been already by law settled and established to be provided for in another manner.

Earl of Hillsborough.

The Earl of *Hillsborough* professed himself totally unacquainted with the bill and every part of it, or indeed he believed with the name till he heard the title now read. If the noble Duke's motion should be adhered to, he should be drove to this dilemma, of saying content or not content. He wished therefore to know on which side to vote, for at present it would be impossible for him, informed as he was, to give a vote either way. He therefore recommended to the noble

noble Duke to withdraw his motion,' and permit the bill to be sent to a committee, where its merits or demerits might be fully discussed, and the claim, if any, of Doctor Smith be fairly ascertained.

The Lord Chancellor.

The *Lord Chancellor* made a very pointed reply, and entered into the nature of the bill, which as he proceeded he more fully explained. He concluded with giving his hearty assent to the motion made by the noble Duke.

The Earl of *Hillsborough*

The Earl of *Hillsborough* replied with some warmth. He said, he disdained the pitiful idea of voting away the property of other people, and then making a merit of liberality, as much as the noble and learned Lord; but he nevertheless wished the bill to proceed to a second reading, and then to a committee; when, if it should appear that the objections to the bill were well founded, he should be one of the foremost in reprobating it.

The Duke of *Chandois*.

The Duke of *Chandois* said, his objection was not to the provisions but to the principle of the bill, and that because it would be a squandering away of the public money: he should therefore meet it on the principle, by adhering to his original motion.

The question was then put and carried; his Grace's motion consequently agreed to, and the bill of course rejected without a division.

The other order of the day was then read for the second reading of an engrossed bill from the Commons, entitled, An act for granting to a Mr. Philips the sum of three thousand six hundred pounds, for discovering a composition or powder for destroying weevils, cock-roaches, and other kinds of vermin, which prove very pernicious in the naval and other provision stores, where great quantities of bread, biscuit, and other, the provisions necessary for consumption a-board ships of war, in camps, &c. are used, as well as in gardens, pineries, hot-houses, &c.

This occasioned a debate, which was carried on for several hours with great heat between the Lord Chancellor and Lord Sandwich. The former being as warm in condemning the principles and provisions of the bill as the latter was in defending them.

The Lord Chancellor.

The *Lord Chancellor* in his first speech opposed the bill, chiefly on three grounds: First, that there was no evidence before the House, sufficient to induce their Lordships to pass the bill, nor one promised but what, from the state of it as announced, amounted to no evidence at all. Secondly, the

the evidence talked of wanted certainty and specification, and dealt only in generals. And, lastly, that the House was called upon to vote the public money, not upon proofs actually had, or existing, but in contemplation, that they might hereafter be made out.

Earl *Bathurst*, who moved the second reading of the bill, said, it was impossible to judge of the merits of the bill in the present stage. All the proofs it was true could not be adduced before the passing of the bill; but there was a clause in the bill which obviated any objection on that account, as out of the three thousand six hundred pounds to be granted, Mr. Philips was to receive but six hundred pounds till after the whole of the proofs were made out.

Earl Bathurst.

The Duke of *Grafton*'s argument against the bill was, that if the discovery was of the infinite importance and public benefit it was represented to be, it would be doing injustice to the author, for it would prove a very inadequate compensation, when compared with the pecuniary advantages he might derive from it, under the sanction of a patent or monopoly; where, if the facts stated were to be depended upon, he must amass a very considerable fortune in a few years. Abandoning so fair a prospect of gain, and enormous gain too, as such a monopoly must ensure, were the grounds or motives for passing the present bill to be relied upon, he had every reason to conclude, that the discoverer had taken the most wise and prudent course; being conscious, that either the whole was a bubble, or that he was not confident of success; nor had fully proved by experiment what he wished might possibly happen.

Duke of Grafton.

Lord *Sandwich* rose in reply to what had fallen from the Lord Chancellor and the Duke of Grafton in the preceding part of the debate.

Lord Sandwich.

Before he entered into the subject, his Lordship stated the numerous mischiefs and the detriment the public suffered from the vermin proposed to be destroyed by this new invention. He read a list of those losses, as stated to him by several of the inferior boards, and contrasted those losses with an account of the experiments which had been made on the powder, and how very successful those experiments had proved.

His Lordship proceeded to answer the objections he had heard stated, he said, by the noble Lord on the woolsack, and the noble Duke in the blue ribbon [Grafton].

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The noble and learned Lord took a very summary way of getting rid of the bill, without putting himself to any trouble whatever, either in respect of proof or argument. His Lordship had recourse to generals, but carefully abstained, for very obvious reasons, from entering into particulars. The learned Lord talked of the lateness of the season, of the advanced period of the session, just approaching to a conclusion. This, if a good objection, held equally against the farther prosecution of public business, let it be of ever such great importance, or carried no weight at all with it; for it amounted to this, that the importance of the object ought to be taken into consideration, and if it was worthy of the attention he thought it was, which could only be decided by enquiry and investigation, then every conclusion drawn to the disfavour of the bill, on account of the advanced period of the session, was clearly at an end. For his part, he thought the bill of very great importance, consequently he could pay no attention to that particular objection.

The learned Lord had conjured up another objection to the bill, which his Lordship predicted must prove fatal. That was, the distressed state of the country, the enormous expences of the war, and the necessary burdens which were the consequence of them; of course the rigid œconomy which became necessary in such a state of things, and moreover the impropriety of giving away money which was destined for public services, and the applying it to private purposes.

He would endeavour to give each of these a separate and distinct answer. This objection, like the foregoing, was taken up on general ideas. He hoped this country was not so far reduced as to have its finances materially affected by the sum proposed to be given to the inventor; but if the learned Lord's objection was founded, that he would not have objected to the bill, if the money raised upon the people was applied to the purposes for which it was granted, that is, for public services, he was ready to say and prove, that the objection was answered, for the present bill would do no more. It would dispose of such a sum of money under the sanction of Parliament, for promoting a great public benefit, which, if he understood any thing of the phrase, came precisely within the description of public services.

His Lordship relied much on the authority on which the grounds of the present bill was founded, particularly the

commissioners

commiſſioners of the victualling-office, and a captain of a man of war (we believe a Captain Dalrymple), who had tried the experiment, and who ſpoke largely and poſitively of the efficacy of the powders.

This, ſurely, was a ſpecies of evidence which ought not to be rejected till heard, or until it ſhould upon hearing be pronounced too weak or irrelative. It was impoſſible to decide upon it in this ſtage of the bill, and of courſe he truſted the learned Lord would not be againſt having witneſſes called to the bar and examined, ſhould the Houſe think proper to ſend the bill to a committee.

He was of opinion, clearly, that the preſent bill was well entitled to the moſt ſerious attention of the Houſe; that it was a public object of conſiderable importance; and that it challenged, in a peculiar manner, the protection and patronage of their Lordſhips in the ſtile and manner it preſented itſelf.

Parliament were the guardians of the nation; it was their duty to promote every beneficial ſcheme offered to their conſideration; and not, upon mere general objections, unfounded ſuggeſtions, and vague arguments, pre-determine, without enquiry, what they were only competent to decide upon clear and ſatisfactory proof.

There was nothing which came under his cognizance in the department over which he had the honour to preſide, that more employed his thoughts and exertions to effect than that of preſerving the health of the ſeamen; and whenever ſuch an object came in view, he ſhould for one think it extremely improper, if not impolitic, to oppoſe the expence it might put the nation to, to ſo great and wiſhed-for an object as that of keeping our ſeamen in a ſtate of health, to enable them to perform their duty, and to prevent that mortality which was ever the conſequence of neglect, and had always proved ſo ruinous and deſtructive to the ſervice.

It might, for inſtance, with equal juſtice be imputed to him, that he had lately put the nation to a very conſiderable additional expence in the article of ſour-crout, which he had given directions to have ſerved aboard his Majeſty's ſhips of war. But after having made the moſt diligent and ſatiſfactory enquiries, being fully convinced that ſour-crout was one of the greateſt anti-ſcorbutics ever invented, or antidote againſt thoſe diſorders which ſeamen, from the nature of the ſervice, are ſubject, he no longer heſitated

about the additional expence, nor was he prevented, by notions of an ill-timed and impolitic œconomy, to consult the real good of the service. On the contrary, he had run a risque of falling under the animadversions of those who delight to find fault, and are ever ready to suggest the most unfavourable consequences; and took, as he ever should, when the interests of his sovereign and his country required, a most active part, never shrinking, or wishing to shrink, from the responsibility which ever accompanied acts of office which were not sanctioned by the usual form.

The noble Duke in the blue ribbon recommended a patent. He confessed he had always been an enemy to monopolies of every kind; they had in the end almost always proved detrimental to the public. If they succeeded, the patentee was left at liberty to raise his price at his pleasure: indeed they seldom did succeed; and when they did, it was next to impossible to ascertain the difference between the original and the numerous counterfeits which were made in consequence of it; so that while the patentee was robbed of the fruits of his invention, the public were cheated by a set of adventurers and impostors.

The learned and noble Lord was for deferring the bill till next session; but in his opinion, considering the peculiar distresses Mr. Philips laboured under, it would in the event amount to a complete negative. The sum which he was to touch, was but six hundred pounds till after the efficacy of the powder had been satisfactorily and ultimately proved; and even supposing the worst, that the powder should not answer in every particular instance predicted, he could not see that such an advance, upon proofs already given, would, in the language of the noble and learned Lord, amount to an enormous and shameful waste of public money.

His Lordship concluded with assuring the House, that the naval and other inferior boards in his department, so confident were they of the efficacy of the powder, that they had already purchased it in great quantities; and he understood so far as trials had been made and the effects ascertained, the powder had answered the most sanguine expectations.

Duke of *Grafton*.

The Duke of *Grafton* observed, that if, as the noble Earl had stated, the powder had hitherto in every trial proved so very efficacious, and if such great quantities had been tried, and so great a demand created in consequence of the success of those trials, Mr. Philips, the inventor, could not possibly be the distressed man he had been described by the noble Earl.

Earl. The profits on the sale must bear some reasonable proportion to the quantities sold; and if there was no doubt of the success of the powder nor of the vent, it furnished the most cogent reason for deferring the bill to another year.

The noble Earl, with a spirit and candour that is natural to him, says, he never stands at trifles or risques when the public service is likely to be benefited. In the present instance, his Lordship does not entertain a single doubt of the success of the discovery. Why not then act throughout with the same liberal spirit he should when his Lordship first rose? Why not at once purchase such a quantity of the powder, for the use of the navy, as may for the present relieve the discoverer from his embarrassments, and defer the bill till a period when Mr. Philips could have nothing to apprehend from Parliament, but a ready acquiescence in rewarding a man who had so materially benefited the public.

Earl Sandwich.

The Earl of *Sandwich* said, his situation did not permit him to sport with or dispose of the public money; nor could he disburse a shilling without the previous approbation of Parliament.

The Lord Chancellor.

The *Lord Chancellor* came for the second time from the woolsack to his place, and begun with observing, that he had the misfortune to be misunderstood in what he said when he first rose. He was charged with dealing in generals, and avoiding to enter into particulars; now, for his part, he imagined, that if any objection properly lay against his arguments, it was because they consisted of a regular series of particulars, in which general abstract reasoning had little or nothing to do.

His first objection to the bill was, that the evidence was not such as to entitle it to their Lordships sanction. This, it was true, might be deemed a general objection, had he neglected to follow it up with specifying the several motives which induced him to be of that opinion. His reasons were numerous, and out of many which he urged he should just remind the noble Lord of two or three. One reason was, that the facts stated in the preamble were either not proved, or acknowledged to be false. The noble Earl at the head of the council [Bathurst] confessed as much, for he fairly acknowledged, with his usual openness and candour, that the experiments made upon vermin in gardens had in fact miscarried. Here then he was at liberty to affirm that the preamble of the bill contained a falsehood on the very face of it; because it stated, that Philips's powder or composition was a

powder for the destruction of caterpillars, flies, and other vermin in gardens; whereas the experiments made warranted no such allegation. So far then the noble Earl must acknowledge his mistake, when his Lordship charged him with dealing entirely in generals; for here was a particular objection, and a fatal one too, unless the preamble should be amended.

The other part of the preamble, relative to the weevils and cock-roaches, afforded him an opportunity of shewing that he had not entirely relied upon general arguments; for, if his memory served him right, he had objected to the evidence adduced in support of the efficacy of the powders in that instance, as well as the foregoing; for he would ever hold it parliamentary language, fit and becoming the duty and dignity of that House, if any doubt arose respecting the species, competency, or grounds of proof which might have induced the other to pass any bill, or the suggestions, opinions or motives which might have operated upon it, to act or determine in such and such a manner, that their Lordships were to take nothing upon trust or authority, but were bound, as legislators and honest men, to satisfy their own consciences in endeavouring to get at the truth. It was on this clear parliamentary ground that he stood, for he would defy the noble Earl, or any other noble Lord who heard him, to say that House was in possession of a single fact to prove the efficacy of the powder in destroying weevils and cock-roaches, no more than the ants. Here was another particular objection; he would proceed a step farther, upon evidence which the noble Lord would, he presumed, hardly attempt to controvert; no other than evidence drawn from the bill itself.

What does the bill say, or rather what does it confess? That no such discovery has yet been duly or satisfactorily proved.

The bill proposes, in the first instance, to give Philips, the supposed inventor, the sum of six hundred pounds, out of a sum of three thousand six hundred pounds, intended for him at some future day. What! six hundred pounds! when the bill says, in another part, that the discovery has not only been made, but fully proved. The conduct of the bill in this particular called for no comment; it was contradictory and absurd. It states that the discovery has been made, and proved in part, and with-holds the reward upon a presumption, or possibility, that it has not been made nor proved, in another. But to varnish over this absurdity, a most extraordinary step of parliamentary management is devised. It is no less than the very decent request made to the legislature

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to vote three thousand six hundred pounds as a reward for an eventual benefit, but at the same time to delegate a power to another description of men, namely, the Navy or Victualling Boards, to dispose of the remaining three thousand, after making an advance, *in præsente*, of the other six hundred. This he was ready to declare was a direct insult upon Parliament, to call upon them to grant money in such a way; it was making them a mere registery of the wishes or designs of other men, and desiring them at the same time to divest themselves of the power of controuling the disposition of the money; for as soon as the bill passed, Parliament would have no more to say to the disposition than if no such grant had ever passed that House. Here he would make his particular stand, and he trusted, that although no other objection existed, this alone would prevent their Lordships from giving their assent to the bill.

The noble Lord said, What! oppose the bill in this stage? You call for evidence, but by refusing to send it to a Committee you shut out every species of proof whatever. He was persuaded there was not a noble Lord that heard him, however willing they might be to send the bill to a Committee, who would not acknowledge that nothing more could come out in the Committee than what their Lordships were already in possession of; suggestions, expectations, and probabilities, of what might or might not hereafter turn out to be true. If the noble Lord who spoke so long and so ably in favour of the bill would boldly come forward, and say, that he had better and more relative proof to lay before the Committee, then to be sure all opposition in this stage of the bill ought to be at end; but the frame and whole texture of the bill gave the fullest proof that no such thing was intended; on the contrary, the bill was framed upon supposition; the allegations taken upon supposition; and, if it should meet with their Lordships concurrence, must be passed upon supposition.

The noble Lord had spoke with his usual energy and volubility in reprobating "the poor ideas of a narrow and short-sighted policy, in dealing out, with a niggardly and trembling hand, the public money, when the welfare of the nation required a most liberal, generous, and grateful conduct. Public services, said a noble Lord, whatever the situation of this country may be represented by its public or concealed enemies, were great, powerful, and flourishing."—So far as the assertion went to maintain the ability of this country to meet her neighbouring enemies, he entirely coincided in sentiment with the noble Lord. No man could be more perfect-

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ly persuaded of the great resources of this country than he was. He knew she abounded in native and acquired strength, and entertained not a single doubt but her finances were such as would enable her to carry on a war, against all those confederated against her, for several years to come; but when this abstract proposition came to be applied to the existing subject under their Lordships consideration, it called for some explanation.

What does the bill say? that the sum carved out is to be drawn from the supplies granted the present session of Parliament; so far then, on the face of it, it takes the money already appropriated for public services, and applies it to a private purpose; for until proof were made of the efficacy of the powder, he should ever consider the present a private gratuity, destined to a private purpose.

Now, whatever the noble Lord might think respecting public generosity and public gratitude, in his apprehension the obligation and the object ought to be first ascertained. Mr. Philips, after all the noble Lord had said in his praise, he had no room to doubt was a very ingenius and deserving man; but still his deserts were of a private nature, unless in relation to the noble Lord and a few of his friends. He honoured the noble Lord for the warmth of his friendships; but sitting as he did there, in his public capacity, he could never persuade himself to reward a man publicly, that is, with the public money, till he had done something for the public to deserve it.

If he understood any thing of taxes, supplies, or of the public revenue, it originated in this simple and clear principle, which he trusted no person who heard him would controvert, that the public contributed a certain part of their individual property in the expectation, and for the purpose of deriving thereby some actual or probable benefit. Apply this maxim to the case before their Lordships, and they would perceive that they were equally bound, by every principle of justice, honour, and true generosity, not to dispose of or grant away the money entrusted to their care, but upon the terms on which only they were competent to give it.

He did not confine his objections merely to the largeness or smallness of the sum sought; it was the example, it was the principle chiefly against which he would, as long as he lived, steadily set his face: for he was firmly persuaded, from the several attempts made of late years in this way, that applications would become every session more frequent; that the public money would be lavished, and not barely thrown

away,

away, but bestowed upon the most worthless and undeserving; men, perhaps, who had no other claim but what the consciousness of having some powerful friends to support them first suggested.

Their Lordships had a very recent instance in respect of a bill they had just disposed of; a bill from the other House, desiring their Lordships to give a Dr. Smith 1200l. not for services to be done, but which had been actually performed. But how did this claim originate? Why, thus; the prisons in the counties of Middlesex and Surrey were or were not neglected; for as to the claim, it was not necessary to determine. Well, Dr. Smith offers his services, or is desired by a member of the other House, since deceased (Sir Charles Whitworth) to attend the prisons in those two counties. The doctor executes his commission, and comes to Parliament with a demand of 1200l. for his trouble; though there is a provision made by law in each county and all over the kingdom for the very purpose. Their Lordships had, however, very properly rejected the request; for most clearly, if they had not, there would not be a single county, town, or city in the kingdom in which some other doctor would not start up, and the tables of both Houses soon be covered with apothecaries bills and prescriptions; and a precedent for neglect on one side, and jobbing on the other, would be fully established, upon no better ground than that some member of the other House, or this House, had desired one man to perform the duty of another, and invited him to go to Parliament for his reward.

He was not disappointed in his expectations when the noble Lord rose; he promised to himself the pleasure of hearing a very full and warm eulogium upon all the boards which are connected with, or dependent upon the very high department the noble Lord so ably and honourably fills, with a panegyric upon particular persons who had the honour of his Lordship's friendship. The noble Lord has done both; but however ready he was to pay the most implicit credit to every thing asserted by the noble Lord, as a member of that House, they amounted to no more than assurances that ought to be believed, so far as they related to the noble Earl himself; but in point of evidence, the saying, that the gentleman who sat at this or that board were persons of the best understandings and of the most approved integrity, and that such an officer was no less known for his gallantry and skill in his profession; every tittle of this he was ready to subscribe to; but the integrity of one, the abilities of a second, or the bravery of

of a third, fell very ſhort, in his apprehenſion, of proving the pretended efficacy of the powders.

The noble Lord had, after producing private or converſational evidence on the ſubject, conſiderably extended his views; he had not only proved in his own way the efficacy of the powder, but entered into a kind of diſſertation upon that ſalubrious viand, ſour-crout. The noble Lord has told your Lordſhips, that he has put the nation to a very conſiderable expence in the article of ſour-crout; his Lordſhip has aſſured you, that being perfectly ſatisfied himſelf of its ſalubrious qualities, and of its almoſt miraculous effects in preſerving the health of the ſeamen, that he did not wait to take the the advice, or procure the previous ſanction of Parliament (nor, his Lordſhip might have added, of procuring a patent) in its favour: No; his Lordſhip declares, that for the good of his country, which muſt have in the mean time been deprived of the benefits deriveable from ſo valuable a ſuccedaneum of health, he broke through the bond of common office forms, which are binding on ordinary occaſions, and run the riſque of the event. His Lordſhip, as he always does when he acts on his own ſuggeſtions and judgement, acted with equal ſpirit and candour. He acted like a great miniſter; he took the reſponſibility upon himſelf, he purchaſed immenſe quantities of ſour-crout, thereby ſubjecting himſelf to the future approbation or diſapprobation of Parliament.

His Lordſhip, after paying numerous other compliments in the ſame ſtile to the Firſt Lord of the Admiralty, alternately pointing out his wiſdom, ſpirit, and firm attachment to his country, made a few obſervations on the nature and obvious tendency of the bill.

The preamble, as he obſerved before, his Lordſhip ſaid, conſiſted of two parts, namely, the deſtructions of the caterpillars and other miſchievous vermin in gardens, and of the weevils, cock-roaches, &c. in his Majeſty's proviſion ſtores, but more particularly among the proviſions aboard his Majeſty's ſhips of war. They were, it was true, ſtrange names; ſome of which he had never before heard of. The animals ſo deſcribed were no leſs ſtrange in their nature: The whole bore a wonderful ſtrange appearance; for the operation of the powder on thoſe animals was, if poſſible, more ſtrange than any other circumſtance whatever.

The effects of the proceſs and experiments made upon thoſe cock-roaches, caterpillars, &c. as he underſtood, were

more than strange; for they struck him as truly extraordinary. The poor caterpillars, the garden-inhabitants, were first attacked; the powder was administered to them, or thrown in their way. They grew sick, very sick indeed! but they unhappily recovered. This trial convinced those who made it, that the powder was very good, strong, and efficacious; but the patients were not of the right kind. Others of a different constitution are now anxiously sought after by the discoverer and his assistants; yet he has not been so fortunate hitherto as to find out the kind of vermin he wants.

The noble Earl at the head of his Majesty's council acknowledges very ingenuosly, that the right subjects are not yet found. These are the latest accounts; and, it is presumed, may be relied on with confidence. As soon as they shall, your Lordships may depend upon hearing the happy and important tidings announced in due form, and all the circumstances leading to an event of such consequence authenticated from the most respectable authority.

His Lordship, by way of recapitulation, took a transient glance at the sour-crout, the noble Lords avowed responsibility for the great risque his Lordship run in ordering such vast quantities of sour crout to be purchased without the previous consent of Parliament, and concluded a speech, which took a full hour and a half in the delivery, with professing his full disapprobation of the principle as well as provisions of the bill

Lord Dudley.

Lord *Dudley* contended, that granting Mr. Philips a monopoly would not be properly rewarding him for a public benefit, as the service expected would be of a public nature. Counterfeits might defeat the private advantages, and moreover, whatever demand he might have for his powder, it might be many years before he could reimburse himself for his great trouble, toil, and expence.

Duke of Grafton.

The Duke of *Grafton* replied, if the amount of damage stated by the noble Lord at the head of the Admiralty had been correctly given, and that the author was allowed only a reasonable profit, his emolument would amount to more within a single year than the sum designed for him by this bill.

Lord Chancellor.

The *Lord Chancellor* said, there was one objection which, in his apprehension, must prove fatal to the bill even in this stage, which was, that the money was to be granted in præsente, upon proofs of its efficacy to be made in futuro.

Lord *Suffolk* called it a notorious and palpable job; said, the great number of years he had sat in the other House, he

 scarcely

scarcely ever remembered a session in which two or three jobs of this kind were not attempted, or carried through. One instance of it just struck his mind; it was a man from Manchester, who pretended to have discovered a method of dying cotton goods in a most extraordinary manner. Specimens were produced, and laid upon the table of the House of Commons. He examined them, and confessed they were most beautiful; but after the fellow had procured five thousand pounds for his wonderful discovery, upon enquiry, he found out it was all a cheat, for the colours, as he was afterwards well informed, flew in three or four days, and lost all their external beauty.

Lord *President.*

The *Lord President* said, it would be disrespectful to the other House to reject the bill in this stage: that the money, though granted, could not be disposed of till proofs of the efficacy of the powder were fully made and established; and that the proper stage to decide upon evidence, if it should be wanted, was in the committee.

Duke of *Chandois.*

The Duke of *Chandois* said a few words against the bill, and moved, that the farther consideration of it should be put off till that day month.

The question being put, the House divided, contents 10, not contents 21. The bill was then read a second time, and committed for the next day.

As soon as the debate was finished, Mr. Fox, who had been present the whole time near the throne, came down below the bar, and presented a bill for the repeal of certain clauses in the Marriage Bill, passed the 26th of the late King.

The bill was ordered to be read a first time the next day, and the House adjourned at half after seven o'clock.

June 29.

As soon as prayers were over, the order of the day for the third reading of the Coventry election bill being read, a motion was made to add an amendment, which, after a short conversation, was agreed to, and the same was sent back to the Commons.

The order of the day was then read, for the House to resolve itself into a Committee on the bill for granting a certain sum of money to Mr. Philips, of Knightsbridge, for his discovery of a powder, or composition, for destroying weevils, cock-roaches, &c. in his Majesty's provision stores, both on land and a ship-board, and caterpillars and other noxious vermin in gardens.—Lord Sandys presided as Chairman.

Mr. Bate

Mr. Bate, one of the Commissioners of the Victualling Office, was examined, and from computations which had been made in his department, it appeared, that so far only as those computations reached, the damage amounted, within the three last years, to fifteen thousand pounds. Other witnesses spoke to some experiments made; but the evidence being objected to, as not coming up to the allegations set forth in the bill, Lord Sandwich read a letter from a captain of a man of war, directed to Mr. Stephens, secretary to the Admiralty, in confirmation of what was deposed at the bar.

The Lord *Chancellor* objected to the receiving the said letter as evidence. He observed, if letters were to be brought forward in this way, at the pleasure of any noble Lord who might think proper to draw forth one out of his pocket, and authenticate the same upon his word, there would be an end of all parliamentary proof, and the calling of evidence to support the allegations of a bill would be no better than a mere farce. If such hearsay letters, at a second, or third hand, were to have any weight, they should be moved for regularly, and an address should go in form to his Majesty, to pray him to give direction, that said letter or other paper be laid before the House as a parliamentary document.

Lord *Chancellor*.

After some farther conversation on the subject, of little or no consequence, it was at length agreed to postpone the farther consideration of the bill till Tuesday next.

One of the gardeners, who was to prove the effects of the powders in his gardens, was absent, as was likewise Mr. Hanway, one of the Commissioners of the Navy or Victualling-Office.

The bill for repealing certain provisions in the Marriage Act was read a first time, and ordered to be printed.

The House rose at half after six o'clock, and adjourned till Monday.

July 2.

The order of the day was for taking into consideration the petition presented from the American prisoners to that House to the Duke of Richmond, respecting government allowance of food and raiment. His Grace, agreeably to promise, took the petition off the table; and the same being read, he ordered enquiry to be made, whether the Commissioners of Sick and Hurt, or any of them, were in waiting and being answered by Lord Sandwich that Mr. Lulman attended, he was called to the bar and examined.

His evidence was in ſubſtance, that he had viſited Mill-priſon on the 5th of June, and found the priſoners in health and ſpirits; if they wanted clothes, it was becauſe they diſpoſed of them to the French for money; which happened to be particularly the caſe in the article of ſtockings That if any complaint was made, it was inſtantly remedied; and the American priſoners were clothed like the Engliſh ſailors.

The foregoing evidence Dr. Farquharſon corroborated. The only precedents the Board had to reſort to were two. The one, the allowance made the rebel priſoners in 1745; the other, the allowance made the Britiſh ſoldiers on board of tranſports. They found the firſt were granted fourpence per man per idem, which was laid out for them by the Commiſſioners of Sick and Hurt, in the purchaſe of one pound of bread, half a pound of meat, and a quarter of pound of cheeſe, without either peaſe or beer. The Britiſh ſoldiers were allowed a leſs proportion of bread, and ſome of the other articles, than the American priſoners, but a larger proportion of beer.

A queſtion aroſe with the commiſſioners, how the Americans ſhould be treated; and they at length agreed upon the following allowance:—a pound of bread, a quart of ſmall beer, three-quarters of a pound of meat, a portion of peaſe, or greens inſtead of them, and either a piece of butter or a piece of cheeſe. This allowance, Doctor Farquharſon ſaid, had been determined on from the commencement of the war, and had been uniformly adhered to ever ſince.

Duke of Richmond.

The examination being at an end, the Duke of *Richmond* roſe and ſaid, he took up the preſent buſineſs with no view whatever but to prevent the Britiſh character for liberality from being injured; it was that, he ſaid, that raiſed this country ſo high in reputation laſt war. All our victories weighed nothing in the ſcale of conſideration, in the eyes of foreign powers, compared to the tenderneſs, the humanity, and the kind manner in which we treated thoſe of our enemies whom the fortune of war had put into our power. He wiſhed therefore, moſt anxiouſly, to preſerve that high national reputation in its full ſplendour, and he was perſuaded, that when no conſtitutional queſtion, no party principle was ſuffered to mix with a ſubject of the ſort with that before the Houſe, and when the appeal was ſolely directed to that nobleſt of all the feelings implanted in the breaſts of their Lordſhips, the impulſe of humanity! inſtead

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of its being neceſſary to uſe a number of words on the occaſion, an apology was due to them for his uſing any to excite thoſe ſentiments which all the world knew to be uppermoſt of all that could have any exiſtence with a Britiſh Houſe of Peers. The evidence their Lordſhips had juſt heard, it was true, proved, that the part of the petition, which ſtated the priſoners were naked, and were ſuffered to remain without needful clothing, was ill-founded; but then the Houſe muſt admit, that, from the nature of things, the evidence was neceſſarily partial, and the only means at getting at fair and equal teſtimony lay, as far as he knew, beyond the reach of their Lordſhips; for, certainly, unleſs ſome of the ſubſcribers to the petition could be brought to the bar, to be heard as to the reaſons on which they grounded that part of the petition, it could not be ſaid that the caſe was wholly before the Houſe. He had lately been applied to, from ſome perſons in Holland, and deſired to take the charge of diſtributing fifteen hundred pounds, (raiſed among certain gentlemen of property in the United Provinces,) among the Dutch priſoners in this country; and upon application to the Commiſſioners of Sick and Hurt, in order to get information how he ſhould proceed, they not only made him maſter of the proper means of diſtributing the money, but gave him every ſort of aſſiſtance that could reaſonably be deſired.

The Dutch, his Grace ſaid, had by ſome means or other, reports made to them, which led them to imagine that their countrymen, who were priſoners in England, were treated with unkindneſs and inhumanity; on their appointing an agent to enquire into the foundation of the complaint, the Commiſſioners of Sick and Hurt gave the agent an opportunity of ſeeing the Dutch priſoners in all the moſt general places of confinement, and after a perſonal examination into the circumſtances of their ſituation, the agent found that there was no cauſe for the complaint, and that the grievances alledged were totally groundleſs. Without therefore going into any diſtinction with regard to the country of one priſoner, or the country of another; without talking of the cauſe for which each made war; without denying that the Americans were rebels, or aſſerting, as he might poſſibly be inclined to aſſert, that they took up arms juſtifiably, in defence of their liberties; it was enough for him to ſay, that it was manifeſt ſome priſoners of war had a larger allowance than others; and that if the allowance made the French, Spaniſh and Dutch priſoners, was barely ſufficient to ſuſtain them,

them, the allowance made the American prisoners was not enough; and so, *vice versa*, if the allowance made the latter was sufficient, the allowance of the former was superabundant and larger than it ought to be. His Grace proceeded, and said, that it ill became Great Britain to treat those prisoners with greater parsimony, and with less liberality in point of food, with whose country we wished for re-union and reconciliation, than the prisoners of France; a nation which some persons had stated to be our natural foe, but which certainly was our more frequent enemy than America had proved herself.

His Grace concluded with moving in the usual form, praying that his Majesty would be pleased to give directions, that the American prisoners should not be in a worse condition than those of France, Spain, and Holland.—This was the substance of the Address.

Lord Sandwich. Lord *Sandwich* said, after the evidence which their Lordships had just heard, he trusted the House would not think it either necessary or expedient to agree to the noble Duke's motion. It had been proved at the Bar, that the American prisoners were in good health, that they had a sufficient quantity of provisions, and that they were comfortably clad at the expence of this country. He appealed to their Lordships, whether, if men accustomed to hard labour in the open air, were healthy and content with a small portion of food, the present allowance to the American prisoners, who were in a state of inactivity and confinement, was not at least as much as could be reasonably expected?

Lord Abingdon and Lord Coventry spoke shortly to the question, but offered nothing new on the subject.

Lord Loughborough. Lord *Loughborough* said, he had paid a good deal of attention to the subject, from the first moment it had been started in the House by the noble Duke's notice. He had attended likewise to the arguments, that had been held, and the evidence that had been adduced upon it, in another place, and he was perfectly astonished to find, that after all, the sole cause of complaint was, that half a pound of bread was allowed to the French prisoners daily more than was allowed the Americans. Enquiries of the kind with the present, he held to be highly laudable, and such as reflected great honour on those who set them on foot. The treatment of all persons, whom the situation of Great Britain and the fortune of war had put in our power, and whom the necessity of affairs obliged us to hold in restraint, was undoubtedly a subject, which concerned us, as a nation, to look to, and to

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see that it was not rendered more hard nor more severe than was consistent with true policy, with humanity, and with that exalted degree of liberality and tenderness, which had, during the last war, and which, he trusted, would, during every war, distinguish this country, and place it above all others. But he could not help repeating his astonishment, to find, after the present enquiry had been sifted to the bottom, that the difference of half a pound of bread per day should remain the only ground of complaint. A book, published by Mr. Howard, setting forth the state of all the prisons in England at the time he viewed them; among other prisons, notice was taken of Mill-Prison, at Plymouth, of Forton Prison, at Portsmouth, and of the established proportion of bread, and every other species of provisions allowed to the different prisoners of war in each. The distinction now dwelt upon, as the subject of the Address just moved, was expressly stated by Mr. Howard, but without any remark, the smallest objection, or the least imputation of censure.

In France, it being usual to consume a much greater proportion of bread than was the custom in this country, the Government had wisely allotted a pound and a half of bread to every prisoner in every jail throughout the kingdom. It was therefore necessary for us to adopt the same rule with regard to the French prisoners, and to feed them in proportion to their habits of taking food in their own country. With an American the case was different. An American, like an Englishmen, was accustomed to eat more animal food than bread, and therefore in apportioning his allowance, that circumstance deserved attention. Besides, a pound of bread was the ordinary jail allowance throughout this kingdom. Even by the act, which from its having originated in that House, was generally called the Lord's Act, it was ordained, those persons, whose cases most loudly called for compassion, viz. persons, who having surrendered their all, were still detained in prison, should be allowed a groat a day; which purchased just that proportion of bread and beef, &c. that Dr. Farquharson had stated to have been purchased with the same sum, for the rebel prisoners in 1745. His Lordship concluded with declaring himself against the motion.

Duke of *Richmond*.

The Duke of *Richmond* said, he had expected to have heard some better arguments against his motion from a noble Lord, who had raised himself by his superior abilities to the elevated and distinguished station which he then filled. The noble Lord, he observed, had made it his first objection, that the present was an old story, and that the difference of the

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the allowance to the French, Spaniſh, and Dutch priſoners, and the allowance made to the American priſoners, was mentioned by Mr. Howard, and was to be found correctly related in his book on the ſtate of our priſons. This was, his Grace ſaid, exactly like what every houſe-keeper daily experienced; whenever he found any thing broke in his houſe, his ſervants always anſwered, "Oh, ſir, it has been broken a long time." He appealed to the Houſe, whether the long exiſtence of an evil proved that it was leſs an evil; and contended, that in the preſent caſe, it did not diminiſh the extent and ſize of the miſchief, that it turned out to have been a miſchief of long duration. With regard to the allotment of a pound of bread to priſoners, in all the jails of the kingdom, the noble Lord in the black gown had miſtated a fact accidentally; he took it for granted. The fact in that reſpect was otherwiſe. To his knowledge, the jail allowance in Suſſex, the county in which he lived, was two pounds of bread a day; the original allowance had been only one pound; but on a late preſentment, that a pound was not ſufficient for the ſuſtenance of the priſoners, the allowance had been doubled. He believed, alſo, that more than a pound of bread each day was allotted to the priſoners in moſt of the county jails in the kingdom. In Holland, whatever might be the caſe in France and Spain, he was pretty ſure, the very contrary rule of feeding was in uſe, and that bread made the leaſt portion of a Dutchman's meal. He meant no national reflection in what he was going to ſay, but he could not help obſerving, that Doctor Farquharſon and the noble Lord in the black gown, came from a country, the habits of eating in which, in his mind, rendered them the laſt men to whoſe meaſurement of what was a fit portion of food for an Engliſhman he ſhould be willing to ſubſcribe. In Scotland it was notorious, the natives were accuſtomed to ſwallow but little ſolid meat, and that they could ſupport nature with conſiderable leſs food than would ſuffice for an Engliſhman. He could not therefore ſuffer himſelf to be ſwayed by arguments proceeding from perſons, who, however able they might be in other reſpects, did not appear to him to be competent judges of the caſe in queſtion. An American was in his mind an Engliſhman; he knew no diſtinction; and both ought to be fed alike. Their Lordſhips ought to be aware that an Engliſhman could not live on oatmeal; and if an Engliſhman could not, an American ought not to be expected to do ſo. But after all, the conſtant queſtion would occur,

cur, ought an American prisoner to fare worse in this country than a French, Spanish, or Dutch prisoner? That question there was no getting over. The noble Lord had not said a word in answer to it. His Grace said, he knew it w custom for great speakers to pass by that part of an argument which pinched most, and possibly it was to that, that he was to ascribe the noble Lords having never met the question, which he had just stated, and which he defied any other Lord had sent to answer.

Lord *Loughborough* said, he should be unworthy the attention their Lordships had shewn him, and should have no right to claim their notice on any future occasion, were he to suffer what had been said, in reply to his argument, to pass without an answer. The noble Duke had first charged him with having mistated a fact, and had defended his accusation by an argument of rather a singular nature. In order to prove that a pound of bread was not the usual jail allowance throughout the kingdom, his Grace had been pleased to state, that owing to a late presentment in the county of Sussex, the usual jail allowance in Sussex had had been doubled, and two pounds of bread allowed to each prisoner daily, instead of one pound; so that the noble Duke had admitted, that one pound had been the usual allowance in Sussex, in the very moment that he meant to establish the fact, that one pound was not the general allowance throughout the kingom. In order to convince their Lordships that he had not mistated a fact, he would repeat what he had said. His Lordship then minutely recapitulated that part of his argument, and afterwards said, that in Yorkshire, a county neither remarkable for its excess of liberality, nor noted for being a county inclined to starving, the jail allowance was something short of a pound of bread a day; this he knew, and he had a right to say he knew it, because the sheriff had lately reported to him as a judge that in York Castle, the prisoners allowance was as much short of one pound of bread each day as the difference in point of weight after it was baked amounted to. His Lordship said it was a little unfortunate for Doctor Farquharson, that he had been examined; the moment, however, that it became necessary to answer what he had offered in his first speech, the tables were turned, and poor Doctor Farquharson became the subject of ridicule as well as himself. With regard to what had been said about Scotland, the mode of diet there, oatmeal and the like, inferior as he was ready to confess himself to the noble Duke in every other respect, he could not

Lord Loughborough.

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but feel, that by condescending to use such arguments, the noble Duke had rendered him so much his superior, and raised him so high above him, that he would disdain to make any reply.

Duke of *Richmond.*

The Duke of *Richmond* rose again, and declared, he meant neither to throw out a national reflection, nor to say any thing personal, in what he had suggested respecting the manner of living in Scotland. He intended solely to state a fact, which he conceived he had a right to make advantage of in his argument. It was true, that Scotchmen were accustomed to a more spare diet than Englishmen; and let the noble Lord consider it in what light he chose, he should persist in stating it to be his opinion, that a man used from his infancy to a more moderate portion of food, than a man otherwise brought up, was not a fit judge of what ought to be a ration of provisions allotted to the latter. At the same time he did assure the noble Lord, he was as much above narrow prejudices, and as great an enemy to national distinctions, as he could be. He wished all mankind to live in a state of amity, and to consider each other as brethren; but in fair argument, he had ever conceived he was warranted in stating his sentiments, as they really occurred, and whether the noble Lord chose to treat them with disdain or not, he should continue to state them freely, and without reserve. His Grace once more challenged the House to surmount the difficulty of maintaining that it was either politic or just to make an humane distinction in the allowance of provisions to prisoners of war.

Lord *Abingdon.*

Lord *Abingdon* asked, what right we had to make the Americans prisoners in the first instance, and called upon the noble Lords in office to prove that any such right existed?

Lord *King.*

Lord *King* argued on the inhumanity of treating those who had been our fellow-subjects worse than other prisoners of war, and contended, that however it might be supported in argument, that the French prisoners were intitled to distinction, it never could be maintained, that any distinction ought to be made between Dutch prisoners and American prisoners.

At length the question was put, and the House divided. Contents 14, proxies 1; Not contents 47, proxies 19.

July 3.

The order of the day for going into a committee on Philip's powder bill being read, Lord Sandys took the chair, and several witnesses were examined.

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Mr. Grimwood, a gardener, was examined, who said, so far as his experiments had gone the powder answered extremely well.

Captain Lisle and two other witnesses were next called, whose testimony seemed rather favourable.

Earl *Bathurst* animadverted very fully on the evidence delivered at the bar, and said, the efficacy of the powder had been so fully and satisfactorily proved, that he hoped the bill would meet with no farther interruption till passed into a law.

Earl Bathurst.

The Earl of *Sandwich* was equally warm and sanguine in his expectations. He trusted no more time would be spent in seeking other proofs, where none were wanting. It was true cavils might be raised, *ad infinitum*, but from the well known disposition of their Lordships nothing like that could be apprehended in such an assembly. Proofs had been sought; proofs had been given; and proofs had been received; after which he thought it extremely unnecessary to trouble the House with a single word more in support of a case so fully and completely made out.

Earl of Sandwich.

Lord *Walsingham* said, he had at one time conceived as great a predilection for the powder as the noble Earl who spoke last. When the matter was first started, the consideration of it was referred to the Board of Trade, where at the time he had the honour to have a seat. As far as the subject came properly before the Board, he must confess he was inclined to think favourably of it, and was led to believe it would answer the end proposed; but upon a closer investigation, and having since then received new lights on the subject, he had found strong reasons for altering his opinion; and though he did it with great diffidence, he was sorry to totally differ from the two noble Earls who had already spoke; for, so far from the evidence being full and complete, he conceived it to be the very reverse, and to be every way imperfect unsatisfactory, and incomplete. Such, therefore, being, in his opinion, the real state of the case, he wished that government would reward Mr. Philips upon farther proofs, or that, trusting to the efficacy of his powders, he might obtain a patent to reimburse him for his loss of time and trouble.

Lord Walsingham.

Earl *Ferrers* condemned the principle of the bill, in the first instance, and totally disapproved of the objects it had in contemplation. He thought, at a season like the present, that the public money ought not to be so applied; and, be-

Earl Ferrers.

foré he entered into a consideration of the nature of the powder, the benefits which were to be derived from it, or the proofs in which its presumed efficacy was made to rest, he had set his face against the bill merely on account of the principle.

He assured their Lordships, that he had not acted entirely an idle part, for understanding it was a favourite purpose to be carried by Lords of great weight and respectibility in that House, he had called that very morning at an eminent gardener's in Brompton, whom he had been informed made a trial of Mr. Philip's powder. He found him at home, and asked him how far the powder had succeeded in destroying ants, caterpillars, and other vermin, which are apt to infest gardens, and prove so extremely injurious to the interest of the cultivator? The gardener, in consequence of those questions, pointed out to him an apricot-tree, with its leaves withered and dropped, which tree he had dressed with the powder, agreeably to the directions which accompanied it.

The gardener, so far from thinking favourably, or even doubtfully of the powder, his Lordship said, was clearly of opinion that it was of a poisonous quality; and assured him, he would not eat the fruit which grew upon those trees which had been sprinkled with the powder on any consideration whatever.

If, where the process was so much more removed from the public danger arising from the noxious qualities of the powder, and the gardener had expressed such strong apprehensions, he thought it behoved their Lordships to be much more circumspect and careful where the powder was to be immediately mixed with the food of the men serving aboard his Majesty's ships of war. In ship-provisions, the mischief might be so extended, as to affect the health of many thousands, before any means of putting a stop to it could be devised; he therefore seriously exhorted their Lordships, to take care what farther steps they took in a business obviously attended with such infinite hazard and peril.

Marquis of Rockingham. The Marquis of *Rockingham* coincided strongly in opinion with the noble Earl who spoke last.—He thought the evidence given at the bar might have been well spared, as it amounted to just nothing. If something more satisfactory did not still remain behind, he should not hesitate to say, that it it was impossible their Lordships upon such proofs, could ever pass the bill. The session was just drawing to a period, the proofs as he observed before, were yet wanting;

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under ſuch circumſtances therefore, if Mr. Phillips ws to be rewarded, at all events he ſaw no other mode of doing it, but by granting that gentleman, a patent; from whence, within a very few years, he muſt derive a moſt ample fortune, if his powder anſwered the expectation he and his friends had already formed of it.

Lord Chancellor.

The *Lord Chancellor* ſaid, he was not yet in the leaſt perſuaded, that the efficacy of the powder had been proved in any one inſtance. He ſaid, he had received a letter from a Mr. Shields, an eminent nurſery-man and gardener, the preceding evening, ſtating, that he had made various experiments with the powder, but it by no means anſwered. His Lordſhip hoped before the Houſe conſented to give away ſo large a ſum of the public money, and as yet for ſeemingly an intereſted purpoſe, all the evidence which could be procured, either for or againſt, ought to be heard. In order therefore, that Mr. Shields might be examined, his Lordſhip moved, that the chairman leave the chair, and report progreſs.

Earl Bathurſt.

Earl *Bathurſt* oppoſed the motion very warmly, and ſaid, he was ſurpriſed to hear the noble and learned Lord who ſpoke laſt, repreſent the bill as an object of private intereſt, merely calculated to ſerve an individual; when it was manifeſt, that the bill was in every poſſible ſenſe of the word, a public one, and had been taken up upon the moſt clear, open, and unqueſtionable ground of public utility; no leſs an object, than that of preſerving the health of our ſeamen againſt the bad effects which had been ſo often, ſo fatally felt aboard his Majeſty's ſhips of war, where thoſe vermin called weevils and cock-roaches, had, by mixing with the ſhips proviſions, rendered them deſtructive to the health of the ſeamen.

As for poſtponing the bill to a future day, merely to hunt out evidence to defeat it, he believed it was a thing totally unuſual. It had already been before the Houſe for ſeveral days, and the not calling or preparing evidence to meet that given at the bar, was in his apprehenſion, giving the point up, unleſs the noble and learned Lord would come forward and ſay, that he would produce the teſtimony of other witneſſes, which would be ſufficient to overturn every thing hitherto advanced in favour of the bill.

Lord Dudley.

Lord *Dudley* ſaid, he felt himſelf hurt at ſomething that had fallen from the noble and learned Lord; as if thoſe noble Lords who had approved of and ſupported the bill, acted from private or intereſted motives. All he could ſay

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in anſwer and in juſtice to himſelf, he could not in his opinion ſay leſs, was, that whatever queſtion came before him, in his legiſlative capacity, he conſidered and determined upon it as a free and independent Peer of Parliament. He never was an advocate for any man, or any bill, as the noble and learned Lord had ſuggeſted, but in every queſtion which came before him, determined agreeably to his conſcience, and as far as he was able to judge, for the good of his country.

Lord Chancellor. The *Lord Chancellor* obſerved, that the noble Lord who ſpoke laſt, had ſo exactly deſcribed him, that it was impoſſible for him to paſs by unnoticed what had fallen from his Lordſhip. He wiſhed ſincerely the noble Lord had attended more carefully to what he ſaid when laſt up; if he had, he was perſuaded he would have been ſaved the trouble of the preſent explanation. His Lordſhip denied that he had by inſinuation, innuendo, or direct expreſſion, aſſerted any thing ſo ſcandalous againſt any one of their Lordſhips. It would have been a groſs reflection upon them as members of that Houſe; it would have been a groſs violation of the eſtabliſhed rules of debate; and it would, were he capable of uttering the like, be a daring and unprovoked inſult put upon the whole body of the peerage. Such an idea was abhorrent to his nature, and as the charge bore ſuch a complexion, he thought any noble Lord, who in the hurry of debate might feel himſelf hurt, ſhould be extremely cautious, in charging another noble Lord with what muſt ſtick ſo faſt, if it ſhould ſtick at all.

His Lordſhip gave the ſubſtance of the letter he received from Shields, ſaid he underſtood Mr. Phillips's powder had raiſed a duſt in both Houſes, but after repeated trials, the powder had failed. He read the material circumſtances as they ſtood in the letter, which in every inſtance, as far as the experiments were made, proved the inefficacy of the powder.

The queſtion was then put. Contents, 15; non-contents, 15.

The Earl of Sandwich ſeeing the numbers were equal, agreed that that the Lord Chancellor's motion, and the farther conſideration of the bill, ſhould be deferred till Tueſday next.

July 4.

Public buſineſs in courſe. No Debate.

July 5.

As soon as the commissioners were robed, a message was sent to the Commons, desiring their attendance while his Majesty's commission was reading, authorizing any three or more Peers to notify the royal assent to such bills as were then ready. Accordingly, when the Speaker and House came to the bar, the royal assent was notified to the Vote of Credit, Sinking Fund, Cocoa Nut, Almanac, Exchequer Ballances, Hemp and Flax, Longitude, and to about ten other public and private bills.

The order of the day for going into a committee on a bill to amend and explain an act of the 17th of his present Majesty, to promote the residence of the parochial clergy, was read, and Lord Walsingham took the chair. Several amendments were proposed and adopted, and the bill ordered to be reported.

As soon as the House was resumed, the Earl of *Abingdon* rose, and gave notice, that he should move, on Tuesday next, for the second reading of the Bill for repealing certain clauses in the Marriage Act, and thought it necessary, that their lordships should be summoned for that day.

Lord Chancellor.

The *Lord Chancellor* leaving the woolsack, said, that the motion was, in his mind, extremely improper, for it would be premature to bring on the consideration of so important a bill at present, when several Lords, not expecting it, were of course unprepared to speak upon it: as for his own part, if all their Lordships had already weighed the matter as much in their minds as he happened to have done in his, he would not feel the least difficulty in moving to put off the second reading of the bill for three months: but as it was possible that their Lordships might not have, as yet, turned their thoughts to it, so he would not deprive them by a hasty motion, of an opportunity of speaking to the merits of the bill. For his part, he did not intend to enter into the merits; it was sufficient for him that so very important a question ought not to be agitated in the middle of July. Many of their Lordships might recollect the abuses that existed before the Marriage Act was introduced: they were so striking, that the House of Peers had directed the judges to bring in a bill to remedy them; the bill was brought in, but as it happened not to prove unexceptionable to the House, it did not pass. In the next session of parliament, another bill to correct the same abuses was brought in, and underwent the

the moſt ſolemn diſcuſſion in both Houſes, before it paſſed into a law: that law had now exiſted twenty-eight years; and the nation was familiarized to its forms: their Lordſhips would therefore be backward to make any alterations in it, until it ſhould have been proved that ſuch alterations were neceſſary. He by no means contended that the law was proper in every reſpect; or that ſome proviſions in the bill to amend it might not be very deſireable; but his great objection to the bill was, that there was not, at preſent, time to enter into as ample a diſcuſſion of the ſubject as it required; and therefore he was ready to confeſs, that on that ground he would oppoſe the bill on Tueſday next. He entertained a great deal of reſpect for the honourable gentleman who was the author of the bill; but he could not carry his reſpect ſo far as to let a bill of ſuch importance paſs at ſo late a period of the ſeſſion, without doing every thing in his power to prevent it.

Lord Abingdon. *Lord Abingdon* replied, that it was his opinion that the bill ought to paſs this ſeſſion; and he truſted that he ſhould be able to lay ſuch facts before their Lordſhips as would afford the moſt irreſiſtible arguments in favour of the bill. But as he knew he was not equal to a conteſt with the noble and learned Lord who ſpoke laſt, he would commit his thoughts to paper, and read them to the Houſe on Tueſday.

The motion was then put and carried; and it was ordered that the Lords be ſummoned to attend the ſecond reading on that day.

Lord Hillſborough. *Lord Hillſborough* having moved the order of the day, for the ſecond reading of the Eaſt India Bill, the Duke of Chandois roſe and ſaid, well aware as he was, of the delicacy of the ground he was about to take, and of the objections generally made againſt any noble Lord's oppoſing a Bill of Supply, he could not conſcientiouſly avoid riſing to oppoſe the bill, for the ſecond reading of which, the noble Earl had juſt moved their Lordſhips. At the ſame time he truſted, that the Houſe would not impute his doing ſo to any peeviſh inclination to object to every bill that came before them, or to any wiſh to embarraſs Government, by endeavouring to prevent a bill's paſſing, which would put a large ſum of money immediately into their power. He knew perfectly well, that ſuch was the exigency of affairs, that it was the duty of Parliament to ſtrengthen the King's hands as much as poſſible, to enable him, if not to ſubdue his numerous and powerful

powerful enemies, as least to carry on the war in such a manner as should ensure us a speedy and an honourable peace He knew also that the hands of government could not be so well strengthened by any other means as by chearfully granting large, though necessary supplies, in order to enable the executive branch of the legislature to make the most vigorous and effectual efforts, the better to give success to the operations of the present expensive and wide extended war. If, however, the national resources were exhausted, and Great Britain must sink, he could not but anxiously wish, that she might sink with honour, and not in the moment of her decline disgrace herself by acts that carried with them indelible marks of ignominy and infamy. The present bill, he must contend, was not a bill of supply; it was a bill of robbery and rapine: It took that by force, the claim to which, at any rate, was neither made out nor admitted. He was far from meaning to deny, that the public had a right to a participation in the profits of the East India Company. He knew they had such a right; but then the extent of it ought to be established to the satisfaction and conviction of both parties before any participation was made. At a period of the session like the present, when the greatest part of the noble Lords who made up that House, fatigued with the labour and long continuance of the session, had left town, and could not give their attendance, a bill of so much consequence as the bill then under consideration, ought not to be brought before their Lordships; and the more especially, at the time which had been chosen for introducing the bill into the other House; viz. just after the company had received the severest blow that had ever been struck against them in India; the effect of which blow and its consequences they neither knew, nor could foretel at the time, nor indeed at this moment.

Having dwelt for some short time on arguments similar to the above, his Grace went into a long and diffusive discussion of the conduct of administration, the expenditure of the public money, the want of system visible in the conduct of Ministers, and other topics, that have come under frequent consideration in the course of the session.

His Grace asserted, that either administration had formed no system of government, or if there was any system formed, it was of so singular and secret a nature, that it was known but to one individual in office, and either dared not face the light, or was incapable of being brought forward. He com-

plained of the lavifh expenditure of the public money, in daily jobs calculated to ferve the creatures of adminiftration, and faid the contractors, on whom the public money was profufely beftowed, were the weevils of our refources. He wifhed for a power ftill more efficacious than that of Mr. Philips, to deftroy thofe noxious vermin, which occafioned fuch violent blafts to the finances of the kingdom. He concluded, with declaring, that he fhould oppofe the fecond reading of the bill.

Earl of Hillfborough

The *Earl of Hillfborough* faid, as he had moved the fecond reading of the bill, he would trouble their Lordfhips with a very few words in anfwer to what they had juft heard from the noble Duke.

The noble Duke, in the fpeech which he had been pleafed to make that day, had, in his opinion, fpoken a long time to a great variety of topics, which had no relation whatever to the bill in queftion, but to the bill itfelf he had faid very little indeed. With regard to that part of the noble Duke's fpeech which did refer to the bill, the noble Duke muft excufe him, if he declared he thought it had been prepared for a bill very different from that under confideration. It appeared to him, to apply rather to a compulfive bill which had been talked of in the world, than to the bill actually before their Lordfhips. So far from the prefent bill being, as the noble Duke had declared it to be, a bill of robbery and rapine, the bill was directly and diametrically the reverfe; nor could he better anfwer the noble Duke, nor prove the affertion he had juft made, more ftrongly, than by reading to their Lordfhips a fhort extract from the bill itfelf.

His Lordfhip then read, that part of the preamble which fets forth, that on the 26th day of June laft, a petition from the General Court of Proprietors of Eaft India-Stock, had been prefented to the Houfe of Commons, in which the General Court declared themfelves defirous of renewing their charter on certain conditions and regulations thereafter ftipulated, and which conditions and regulutions made up the feveral claufes of the bill. His Lordfhip having read the whole of the neceffary extract, obferved, it was thence evident, that the bill was not what the noble Duke had reprefented it to be, a bill of robbery and rapine; but that on the contrary, it was a bill tending to authorize and fanction an agreement mutually and cordially fettled between the parties. With regard to the other topics on which the noble Duke had expatiated, he faid, they were fo thread-bare, and the

arguments,

arguments, ſuch as they were, which the noble Duke had condeſcended to uſe, had been refuted ſo often, (having been contradicted and diſproved again and again) that he would not trouble their Lordſhips any farther; the noble Duke therefore, muſt excuſe his paſſing them over in ſilence. His Lordſhip moved, that the bill be read a ſecond time; which motion was carried without a diviſion.

July 6.

The order of the day for the ſecond reading of the bill for indemnifying the Governor-General and Council of Bengal, for all acts done contrary, or in diſobedience to the orders, proceedings, and determinations of the Supreme Courts of Juſtice in that province, being moved,

Lord *Abingdon* roſe to oppoſe it, and ſaid, "My Lords, I riſe to move to your Lordſhips, that the conſideration of this bill be put off to this day two months; I do ſo, my Lords, merely from what I ſee in the title page of it, and without entering at all into all the laboured intricacy and ſeeming undigeſted chaos of its contents; contents, my Lords, that to digeſt, would bring your Lordſhips to the hour of another ſeſſion of parliament without finiſhing this. The part of the title page alluded to, is this: 'And alſo for indemnifying the Governor-General and Council of Bengal, and all officers who have acted under their orders or authority, in the reſiſtance made to the proceſs of the Supreme Court.' My Lords, was there ever ſuch a title page to a bill before? all the volumes of your ſtatute books, undigeſted and voluminous as they are, will not give you ſuch an example. An act of parliament paſſes appointing a Supreme Court of Judicature in India. Now an act of parliament paſſes to indemnify reſiſtance to that Court. My Lords, there are caſes where reſiſtance is the law of the land. The caſe of America is ſuch a caſe. But thoſe caſes want no indemnification. This caſe, however, it ſeems does, and therefore, my Lords, we muſt have time to conſider it. My Lords, I move your Lordſhips, that the conſideration of this bill be deferred to this day two months.

Lord Abingdon.

The Earl of *Radnor* ſeconded the motion on the grounds of the arbitrary and deſpotic powers with which it armed the Governor and Supreme Council of Bengal. The conduct of the officers of the Eaſt India Company in their ſettlements had been for many years the diſgrace of the empire as well as its bane. They had, by acts of unparallelled op-

Earl of Radnor.

preſſion, accumulated fortunes of a princely nature by acts which degraded them from the rank and character of men, and which brought deſerved obloquy on the nation to which they belonged. To check theſe inhuman practices, the act he complained of had paſſed, if it was true, as he believed in ſome inſtances it was, that the Supreme Court had gone to lengths by which they were unwarranted by the charter of their eſtabliſhment, it was certainly in the power of Parliament to make regulations for their good government, without doing that violence to the conſtitution which in his opinion the preſent bill was calculated to effectuate. He ſhould always conſider the laws of this country as the beſt fitted the legiſlature to diſpenſe, and the ſubject of Britain in all her extended territories to enjoy. He did not think it either wiſe or juſtifiable in Parliament to paſs this haſty law on the evidence of one of the parties intereſted in the eſtabliſhment of this form of government. They ought to hear the parties accuſed in their own juſtification, they ought to deliberate with great caution on the buſineſs, and not in the concluſion of a moſt tedious ſeſſion paſs it into a law without much attention, or any juſt knowledge of the facts and nature of the queſtion. Their Lordſhips ought to reflect, that this act was to influence the lives, the happineſs, and the fortunes of a number of people, ſo great a number that we could hardly form in our minds an idea of the operation of this act. What numbers muſt it not involve in ſlavery, what numbers muſt it not deliver into the hands of the Governor and Council; into the hands of thoſe men who have been, as he ſaid, thoſe who had already brought diſgrace on their country and on human nature by their rapacity and their violence! The check upon them was exceedingly inadequate, and ought undoubtedly to be rendered more equal to the importance of the truſt.

Lord Stormont
Lord Stormont roſe to defend the bill. He ſaid, that the principle of the laws of England was ſo oppoſite to the laws, cuſtoms, and religion of the inhabitants of the Eaſt Indies, that it would be madneſs to introduce our laws among them. What man in his ſenſes would think of binding Mahometans and Gentoos by laws that were made for the government of Chriſtians? The Britiſh laws were excellent no doubt; and no one could venerate them more than he did; but it was becauſe he felt them to be excellent that he would not introduce them in India. for why were they found excellent in England? It was becauſe they were congenial with our conſtitution

ſtitution, habits, cuſtoms, prejudices and religion; and that was the reaſon why they muſt be diſagreeable to Gentoos and Mahometans; for as they militated ſtrongly againſt their laws, habits and religion, they muſt deem it tyranny to be governed by them. The Tartar, the ſavage conqueror of China, was prudent enough not to impoſe his laws upon that empire, but ſuffered it to be ruled by thoſe laws to which the Chineſe had been long familiarized. We were conquerors, and hard ones too; for we ſhewed ourſelves more imprudent, more raſh, and more cruel, than thoſe Tartars whom we might pleaſe to call Barbarians. He meant not to throw the leaſt blame upon the Judges of the Supreme Court of Judicature; on the contrary, he was willing to admit that they had acted with the moſt upright intention; but ſtill he muſt ſay, that they extended their juriſdiction ſo far that the Governor and Council had been at laſt obliged to oppoſe their orders, to preſerve thoſe ſettlements which were allowed on all hands to be precious to this country. However, though they had undoubtedly acted for the beſt, yet as they had acted againſt law, it was fit that they ſhould be indemnified for their intentions; and it was alſo neceſſary they ſhould be armed with ſuch powers, as ſhould enable them to preſerve the tranquility of the ſettlements: and though it was intended that they ſhould have a certain portion of arbitrary power, ſtill care had been taken to make ſuch proviſions in the bill as ſhould make them careful not to abuſe it; and this was by making them reſponſible to the Courts of this country for their conduct. From all theſe conſiderations, he hoped their Lordſhips would not concur with the noble Lord, who had moved to put off the bill.

Ld. *Abingdon.*

Lord *Abingdon* roſe again, and added ſome more obſervations againſt the bill; he talked of certain matters contained in it being of the ſort which would juſtify impeachments, and declared he meant to make them the ground-work of impeachment of his Majeſty's miniſters, when the ſeaſon ſhould be ripe for it.

Lord Chancellor.

The *Lord Chancellor* ſaid, the noble Earl who ſpoke firſt, and the noble Earl who ſpoke ſecond, had made an impreſſion on his mind, and taught him that much might be advanced of a very ſerious nature, both for and againſt the bill. The objection firſt ſtarted by the noble Earl, who opened the debate, carried great weight with it, and ſeveral of the objections taken by the other noble Earl were alſo entitled to attention. He made no ſcruple to ſay, that he

for one ſhould be ready to contend for putting off the bill till another ſeſſions, when it could be diſcuſſed more ſeriouſly and more amply, were it not, as the noble Viſcount in the green ribbon had obſerved, abſolutely neceſſary that the evil, ſtated to have occaſioned the bill, ſhould have an immediate parliamentary cure.

There was at this time a civil war, as it were, carrying on in India, between the Supreme Court of Judicature and the Governor-General and Council. Such a warfare could not but involve in it all our Indian concerns, and produce conſequences that muſt neceſſarily be extremely miſchievous. The urgency therefore of the caſe, called upon parliament to apply a temporary remedy, for he acknowledged the preſent was no better. He lamented, that a bill of ſuch real importance had not been brought in earlier in the ſeſſion. With regard to ſeveral of the objections that had been ſtated, many of them (he ſpoke it with great ſubmiſſion to the noble Earl from whom they came) appeared to him to be rather objections that went to the parts and clauſes of the bill, than objections that applied immediately to the principle. He would therefore hope, that every noble Lord, as well as thoſe who had ſpoken againſt the bill, as the noble Viſcount, who had ſo ably and ſo clearly ſhewn the great neceſſity of the Houſe agreeing to paſs it, would conſent that it ſhould go to a Committee, and when it was before the Houſe in that ſtage, and under inveſtigation, clauſe by clauſe, he did not deſpair of rendering the whole unobjectionable, by a few ſhort amendments. He ſaid, farther, that he agreed with the noble Earl in the validity of his objection, when he had ſtated that a deſpotic power ought not to be lodged, if poſſible, any where; but if it was at any time requiſite, it ought to be as guardedly delegated as poſſible, and the conduct ariſing from it to be rendered ſubject to reviſion and examination, of one kind or other, ſomewhere. A government having, in its principle, arbitrary power, was undoubtedly obnoxious to the underſtanding and feelings of every Engliſhman; but then it ought to be remembered, that where a government of that nature was to be exerciſed, in conſequence of the preſent bill, the perſons ſubject to it were no ſtrangers to arbitrary power; they had lived from their cradles in the habits of accommodating their conduct to deſpotic ſway, and they would feel it as no hardſhip whatever. His Lordſhip went through every clauſe curſorily, ſtating the moſt preſſing objections, and ſhewing what ſort

sort of amendments might do them away. In regard to the arbitrary power, he thought execution in cases of life, and sentence in other cases, might be staid, upon a regular application, and wait till an appeal was decided on here in England. He concluded with pressing their Lordships to suffer the bill to go to a Committee.

Ld. Radnor. Lord *Radnor* rose again, and gave his consent to the noble Lord's requisition: he then entered into the discussion of the clause, vesting an arbitrary power in the Governor and Council; and said, whenever he found it unavoidably necessary to vest an arbitrary power any where, he should choose to vest it in one person, and not in a number. Their Lordships might see, by an examination of the records of the Governor and Council, that what was done at one time by a small majority was contradicted and undone afterwards by three or four others. His Lordship added, that he thought it was wiser and safer to lodge absolute power in the breast of one man, and to make that man responsible, and if he should deserve it, punishable for his conduct.

The Lord Chancellor made a short reply.

Ld. Abingdon. Lord *Abingdon* also spoke a third time, and said arbitrary power was incompatible with our constitution. Great Britain was a free state, and it was a solescism in term for a free state to grant an arbitrary power. The one and the other could not exist together.

On the question being put, the bill was read a second time, and committed for Monday.

A short conversation passed after the second reading, relative to the choice of a day for the commitment of the bill. Lord Abingdon wished to have all the papers before the House, on which the House of Commons had passed the bill. The Lord Chancellor shewed, that it w s impossible to say, whether those papers were necessary or not, till the bill was before the House in a Committee.

July 9.

As soon as prayers were over, witnesses were examined, and Counsel called to the bar on the bill for warehousing sugars.

Lord Grantham. The Counsel being withdrawn, Lord *Grantham* rose, and observed, that by what appeared in evidence, and argument at the bar, there arose several questions which required much serious deliberation, much more than it was possible it could receive at so late a period of the session; he therefore

moved

moved that said bill be taken into farther consideration on that day month, which motion was unanimously agreed to.

The second order of the day was then read for the House to go into a committee on the Bengal Judicature bill, Lord Sandys accordingly took the chair of the committee.

Lord Chancellor. The *Lord Chancellor* then rose, and made several pointed observations on the necessity of a bill such as the present, in principle, but different in the provisions; some of which he said, and endeavoured to prove, had partly a doubtful, and partly a dangerous tendency.

Earl Mansfield. Lord *Mansfield* endeavoured to obviate the material objections, and to reconcile the present bill with that passed the 13th of his present Majesty, in point of ultimate jurisdiction.

Lord Chancellor. The *Lord Chancellor* replied, and seemed to appeal to Lord Loughborough, (they were both at the time the law officers, of the Crown) whether the objections he had taken were not well founded.

Lord Loughborough. Lord *Loughborough* wished to peruse and compare both bills, or the present bill with the existing law.

Ld. Mansfield. Lord *Mansfield*, in a short speech, made farther observations on the bill.

At length, by a kind of compromise, the Lord Chancellor moved, that the chairman do leave the chair, and report progress.

Ld. Loughborough. Lord *Loughborough* said one day could make no difference.

The other orders of the day were postponed, and the House adjourned at half after six o'clock to the next day.

July 10.

The order of the day to go into a committee, upon Philips's Powder bill being read, the Earl of *Sandwich* rose and observed, that so many reports had gone forth relative to the inefficacy of Mr. Philips's powder, and so many differences had arisen among their Lordships on the subject, that the bill, though sufficiently important to claim their Lordships warmest attention, was not of importance enough, in his mind, to take up so much of their Lordships time at so advanced a period of the session. He should therefore, when every moment of their Lordship's time became so precious, content himself with an Address to his Majesty, that the result of the several experiments which have or shall be made aboard his Majesty's ships of war be laid before that House at the opening of the next session of Parliament.

Earl of Sandwich.

His

His Lordſhip followed up this motion with another, that the farther conſideration of the bill be deferred till that day three weeks or a month. His Lordſhip farther declared, that he had no wiſh one way or the other, unleſs ſo far as the public were likely to derive a benefit from the invention, and if after the documents which he now moved for, were produced, it ſhould be found that the inventor had deceived himſelf, he would be as ſanguine as any one noble Lord, who heard him, in rejecting the whole, and in endeavouring to ſet aſide Mr. Philips's pretentions.

Marquis of Rockingham

The Marquis of *Rockingham* objected to the form of the Addreſs to the Crown.—He ſaw no reaſon, now, when the witneſſes were waiting to be examined, and all the proofs before their Lordſhips to poſtpone the buſineſs any longer. A few days ſince ſuch a motion might have been proper, it would have ſaved their Lordſhips a great deal of time and uſeleſs attendance, but when the merits of the bill, were at iſſue, in his apprehenſion, the motion was premature.

He could ſee no ground for making his Majeſty a party in the buſineſs. It was unneceſſary, if not diſreſpectful. Beſides, he was aſtoniſhed to hear the noble Earl doubt, for the firſt time, of the efficacy of the powder, after he had aſſerted in his place, that he had already purchaſed from the inventor no leſs than one hundred ton of it for the uſe of the navy!

His Lordſhip concluded, with aſſuring his Lordſhip that he ſhould oppoſe the motion, but he preſumed, the noble Earl relied for the ſucceſs of the firſt merely on the merit of the ſecond, that of poſtponing the farther conſideration of the bill till the next ſeſſion of Parliament.

Earl Ferrers

Earl *Ferrers* preſſed for the immediate examination of the witneſſes.

The queſtion being put upon Lord Sandwich's motion, the Houſe divided. Contents 21, not contents 13.

His Lordſhip next moved, his other motion, and changed it for that day three weeks.

Ld Abingdon.

Lord *Abingdon* addreſſed their Lordſhips in the following words "Conceiving the bill that is now before us, to be in this hour of much-wanted reformation one of the great *deſiderata* of the ſtate, I am come down, ſuppoſing it to meet my idea, to give it my moſt hearty ſupport.

"The bill, my Lords, I conceive to be a bill ſtating the invention of a powder for the deſtroying of vermin; and my idea is, that theſe vermin, are the vermin of the Court, that is to ſay, the vermin that have been ever ſince the commence-

ment of the American war, sucking the blood and preying upon the vitals of this nation; such as contractors under (in the true *Linean* system) all their different *classes*, *genera*, and species, jobbers, place-mongers, bank-note, or ready-money parliamentary-men, loanists, or otherwise called scrip-men, with all the other various variety, which, from the want of acquaintance with the natural history of this creation I am unable to name.

"I say then, my Lords, if this be the object of this bill, I hope your Lordships will think that I shall be most sincere in my support of it, nor can I suppose that there is a single Lord in this House, who will not lend me his aid upon this occasion; especially, when your Lordships consider that, in this case, it is with the body politic, exactly the same as it is with the body natural: the more beggarly a beggar is, the greater number of vermin he has always about him; and just so it is with the state at present, the more it is impoverished, the more it is sunk, the more beggarly it is, (thanks be to the Minister) the more is it to be surrounded with, the more do they cling about it; the faster do they stick upon it, and the more is it to be eaten up alive, and devoured by these vermin.

"But now, my Lords, having said this, I am afraid I have been forming an expectation of this bill, which is not at the bottom of it; but on the contrary, that instead of intending to destroy jobbers, this bill is the most arrant job of itself in the world, and not only so, but the most shameful imposition that ever was attempted to be put upon the legislature of this or any other country; so shameful, my Lords, that I can consider it in no other light, than as a trial (by playing a mere boyish trick with us) to see how far, and to what length the Parliament of England will suffer itself to be duped and imposed upon; for, my Lords, taking this bill in its true light, what is the object of it? The object of it is to destroy vermin by means of a powder that has been invented for the purpose: but how, my Lords, is this to be done? is the powder to operate by fascination? Is it to act of itself? is it to be its own distributor? No, my Lords, no such thing; but how then is it to be done? Why, my Lords, as I understand, it is to be done in the manner in which when we were boys at school, we were taught to catch birds, by putting salt upon their tails, and so putting this boyish trick upon us: as for instance, to catch a bird, you are to put salt upon its tail, and so to kill an insect, you are to put this powder upon it; and then, my Lords, you are told with a great deal of gravity, that this is a secret, and that for this secret

ſecret, we are to pay the ſum of three thouſend ſix hundred pounds net money. Yes, my Lords, it is for a ſecret; it is the ſecret that has been long ſince waſting and exhauſting the treaſure of this country. I am told, my Lords, (but this is no ſecret, for I read it in the public papers) that one Pinchbeck, commonly called Patent Snuffers Pinchbeck, is to be a jobber in this job; and here lies the ſecret, my Lords, a ſecret that may lead to the diſcovery of a great many others, and much greater jobs and ſecrets than this is.—But, now, my Lords, adverting more immediately to the point before us, I will, with your Lordſhips permiſſion, give the Houſe ſome information that has come to my knowledge, reſpecting this Philippic powder (as it may well be called; for, in killing vermin, it creates Philippics that may be of uſe in directing your Lordſhips judgments upon this bill.---It ſeems, my Lords, that the French as' well as Britiſh Weſt-India iſlands, having been of late years ſo much afflicted with vermin as moſt materially to injure their crops, very great rewards were offered to any perſon that would undertake the cure of the evil. And this, probably, my Lords, was the motive that firſt ſet Mr. Phillips's inventive genius to work. But, my Lords, be this as it may, Mr. Philips, in ſearch of the reward that was held out to the public by the Britiſh Weſt India iſlands, did think fit to make an offer of his ſervices to the body of Weſt-India planters and merchants in the city of London; of which the conſequence was, that a committee of planters and merchants were appointed to enquire into Mr. Philips' pretenſions as to the undertaking; and they being ſo appointed, and the parties met, the following was the iſſue of buſineſs: Mr. Philips was aſked by the committee in what manner his powder was to be uſed? He anſwered, by ſtrewing it over the ſurface of the land. He was then aſked to what depth ought it to be laid upon the land? He ſaid, about the eight part of an inch. The next queſtion then was, what was the price of his powder? He anſwered, if much of it was wanted, the price of it was a guinea per hundred weight. In poſſeſſion then of theſe facts, the next proceeding of the committee was, to calculate by the quantity that was wanted for an acre of land what the expence of the powder would be per acre; and it appeared that the quantity of powder neceſſary to ſtrew over an acre of land, the eighth part of an inch deep, would amount in price, at a guinea per hundred weight, to three hundred and fifty guineas; a price more than ſix times the value of the fee ſimple of an acre of land, whilſt at the ſame time, the

experiment remained to be tried upon the neighbouring acre, equally effected with vermin; and so on from acre to acre, wherever the vermin were to be found.—I need not, methinks, my Lords, tell your Lordships what was the report of this committee to their body. It certainly was not what this bill reports to us from the House of Commons. From the House of Commons, Mr. Philips is sent up to us to demand three thousand six hundred pounds. From the committee of West-India planters and merchants, Mr. Philips was dismissed with a flea in his ear, that he might make use of his powder upon himself, and not upon them.—

I trust, my Lords, that we shall follow the example of the planters and merchants, in preference to that of the House of Commons, and in so doing, give Mr. Philips another flea in his ear for the use of his powder. There is one thing, my Lords, I had forgot to mention. It was said in the committee of West-India planters and merchants, that Mr. Philips's experiments, carried into use, would be a good way of paying off the national debt. Possibly this may be the secret between the minister and Mr. Philips, for which Mr. Philips is to be rewarded. If so, my Lords, I beg pardon for having troubled your Lordships, and I recant what I have said.

The House then went into a committee on the Bengal Judicature bill, and after altering some, and totally omitting others, the Lord Chancellor moved that the House be resumed, the chairman ordered to report progress, and the committee to proceed the next day.

July 11.

This day previous to the House being made, a long conversation took place between the two law Lords present [the Lord Chancellor and Lord Loughborough] and some others, supposed to be interested in the question which was expected to come on.

At half after four o'clock, the order of the day was read, for the House to go into a committee on the Bengal Judicature bill, on which Lord Sandys took the chair of the committee.

Lord Chancellor.

One or two clauses of the bill having been read, the *Lord Chancellor* rose and made a most able and learned speech. He observed, that the bill came from the other House in a particular form, and so framed, that he was sorry he could not agree with it, though he sincerely believed it was well intended.

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The clauſes or proviſions which he ſhould move to leave out might be deemed by ſome perſons the moſt relative and eſſential in promoting the intended effect, and obtaining the objects of the law. It might poſſibly be urged, that he did not combat the principle of the bill, though he objected to ſome of the proviſions; conſequently, that notwithſtanding any objection he might now make, he totally approved of the principle. This point was what in his opinion called upon him for a particular and preciſe explanation; and this, according to his apprehenſion, could not be done without having reference to the law paſſed the 13th of his preſent Majeſty, which had, in fact, given birth to the bill now before their Lordſhips.

Let us ſee, ſaid his Lordſhip, what was the evil complained of at that time, and what was the remedy applied. The principal evil was, that the company's ſervants, and others, deriving right, powers, and authorities under the Company, had been guilty of very great enormities and oppreſſions, as well over his Majeſty's new as his native ſubjects. There was ſcarcely any ſpecies of oppreſſion, or public or private malverſation, which had not been committed under thoſe powers; and there can be little doubt but thoſe complaints, numerous as they were, and aggravated in ſome inſtances as they muſt have been, had much, I fear greatly too much foundation in truth. The reaſon which gave riſe to the interference of the Engliſh legiſlature, however diſagreeable that interference on ſome accounts might be, was this; that the very perſons, their dependents, or thoſe whom they had an intereſt in protecting, or thought fit to protect, who were authors of thoſe oppreſſions, were the very people who, under the former conſtitution, were inveſted with the power of hearing, and ultimately giving judgment, or adminiſtering redreſs to the injured party or parties.

In framing the former law, two principle objects preſented themſelves to the Britiſh legiſlature. The firſt to protect the Britiſh native ſubjects reſident on the ſpot from the perſecution of their ſuperiors, or thoſe acting immediately under the authority of the Company; the other, to ſhield the poor natives, ſtrangers alike to our laws, religion, civil polity, and conſtitution, from the injuries and wrongs they were liable daily to ſuffer, either from the government there, the perſons employed by them, or individuals. There was beſides, another original defect in the chartered conſtitution; which was, that there being no ſuperior court in the country,

try, deriving its powers immediately from the Crown, if any act of rapine, oppreſſion, or any other ſpecies of injuſtice was committed, there was not even a poſſibility of obtaining redreſs or ſatisfaction for the injured, ſo long as the wrong doer choſe to remain in the country It was true, that as ſoon the injurer and injured came home, the latter had the law open to him; but whether in India or England, all redreſs was precluded till the wrong doer returned to this country. This impediment ſtood equally in the way of the native Hindoo and the Britiſh ſubject.

To remedy the evil here deſcribed, it was thought proper to create a juriſdiction in the court of King's-bench, for the purpoſe of opening the door to juſtice; that is to ſay, if any injury had been committed in India, to give the new court of judicature, created or eſtabliſhed by the ſame act in Bengal or Calcutta, a power of taking cognizance of ſuch offence, whether the parties were in Britain or India; and if any of the material witneſſes or parties happened to be in England, in that caſe, to impower the court of King's-bench here to take depoſitions, &c. from the perſons concerned, and that the ſame might be tranſmitted to the Supreme court at Bengal, in order to enable that court to give final judgment.

This, I take it, was one of the main objects of the bill, whether applied to the ſeveral deſcriptions I have alluded to, or the ſpecific powers, authorities, juriſdictions, and perſons I have pointed out.

It will not be improper, I preſume, to remind your Lordſhips once more, that the evils were two fold, as was likewiſe the remedy; for if your Lordſhips will only attend, whether one or both the parties were abſent from India, the perſon injured had it in his power to obtain redreſs; and in the other inſtance, ſo far as the law reſpected the native of Bengal, though his oppreſſor was in England, by appealing from the place of his reſidence, the proceedings ariſing from the new legal power veſted in the court of King's-bench, by proceſs in that court here, and tranſmitted to the Supreme court in Bengal, there was no let or hindrance whatever to the effectual and full diſtribution of juſtice.

Upon this clear and equitable intention, the law of the 13th of his preſent Majeſty, for the better government of the territories of the Eaſt India Company was paſſed, and a Supreme court of criminal, as well as civil judicature, erected in that country, at leaſt ſo far as the ſame could be conſtrued to be applicable to particular purpoſes; the ſuppoſed im-

proper

proper exercise of which judicature is the ground of the present bill.

Your Lordships may wish to know perhaps, before I proceed farther, why I should endeavour to throw any impediments in the way of the passing of the present bill, after I have declared my opinion, that the evils complained of, call strongly for a remedial law to remove or correct them. It is sufficient for me to say, before I proceed farther in assigning my reasons, why I think a remedy is wanting; that I likewise am persuaded that, considering the vast importance of the bill, the probable state of that country while I am speaking, the necessity there exists for doing something, and the infinite danger or probable mischiefs there may arise from doing too much; it would be equally imprudent and impolitic to pass the bill in the shape it came to us from the other House, as it would be to totally reject it. And now, if your Lordships will give me leave, I will endeavour to elucidate more fully what I mean.

The design of the law of the 13th of his present Majesty, never did or could mean, because it would be preposterous so to do, to create a general, indiscriminate, unqualified jurisdiction over the people; nay, over even the governmental power of the country, the supreme council and governor general. The laws of this country were intended only to affect the British or natural born British subjects, and to protect the Indians or natives from all sort of injury. It was never in the contemplation of the British legislature to compel the natives to be bound by our municipal laws relative to property; their manners, habits, religion, in short every one circumstance which related to them as men or citizens, loudly and peremptorily forbid it. It was consequently truly preposterous and absurd to impose upon the natives such laws, as in many instances they could not obey, in more they could not comprehend, and which, however wise or just in themselves, they must detest, as originating in a spirit of persecution, and founded in the highest injustice.

In another point of view, the disagreement between the governor and council and the supreme court I look upon to be a particular misfortune. I am not now deciding, which was originally in the wrong, or whether both of them may not have been so. It is enough for me, that either they acted agreeably to the powers vested in them, or stretched the powers they were vested with, in order to prevent what they might have deemed a greater evil. In either event, I am not

not prepared to go the whole length the bill propoſes. It is poſſible, that the powers propoſed by this bill, to be veſted in the governor general may hereafter become neceſſary. It is not improbable, but the juriſdiction of the ſupreme court will be limited in ſome inſtances, and require to be enlarged in others; but, beſides the want of evidence on both ſides, as I obſerved before, at ſo late a ſtage of the ſeſſion, and conſequently with ſo ſlender an attendance, I cannot ſay that I can, conſiſtent with my duty, agree to the bill, unleſs the clauſes I have already pointed out are omitted.

It may be ſaid, and perhaps with great juſtice, that ſomething ought to be done. I am ready to grant, that the evil, whether of a greater or leſs magnitude, ought to be corrected, and that meaſures, ſuch as may promiſe to quiet the minds of the complainants and injured, ſhould be adopted. To effect that purpoſe I am ready to go as far as any noble Lord can wiſh to do, but no farther. I would recommend to have this buſineſs taken up the next ſeſſion, and fully and gravely diſcuſſed. At preſent, after the clauſes propoſed by me to be ſtruck out are omitted, there will be enough of the bill left remaining to anſwer all the purpoſes of a temporary ſuſpenſion of the evils complained of. The Governor at one ſide will have it in his power to effectually diſcharge all the duties of his high ſtation; the Judges will be reinſtated, *pro tempore* in the exerciſe of every part but what is deemed the oppreſſive powers of their juriſdiction; and your Lordſhips will come fully prepared to conſider a queſtion, which in every point it can be viewed, ſeems to be worthy of your moſt ſerious conſideration.

His Lordſhip then offered ſeveral amendments to be inſerted, inſtead of the clauſes omitted for putting a ſtop, or rendering of none effect, all proſecutions of the nature therein deſcribed, which have been, or may hereafter be inſtituted in the Supreme Court of Bengal, from the year 1780, and until the concluſion of the next ſeſſion of Parliament.

The bill being gone through, the ammendments were ordered to be reported. Adjourned.

July 12.

Previous to moving the order of the day, for the ſecond reading of the new marriage-bill, commonly called Mr. Fox's Marriage Bill, the Earl of *Abingdon* addreſſed the Houſe to the following effect:

Earl of *Abingdon.*

My

My Lords, although I rise to give my countenance and support to this bill, it is not because it is such a bill as either meets my opprobation, or obtains my wishes; and, my Lords, for this reason: That when any measure is in itself wrong, no modification of that measure can make it right: it is the removal of the measure itself only that can cure the evil. Upon this principle then, my Lords, and inasmuch as this bill is intended to make that which is very bad a little better; so upon this principle, this bill cannot meet either my approbation or wishes. Instead of a modification of the marriage act, if it had been a bill of repeal in *toto*, in that case my approbation and wishes, like the measure itself, had been compleat; but as this is not the case, we must take the good and leave the bad; we must look to the light, and shut our eyes against the dark parts of this bill; and if a man and a woman, though called up by nature, that is, if *habiles ad matrimonium* cannot propagate their species (because forbidden by a positive law) at fourteen or twelve years of age, it is better that they should do so at eighteen and sixteen, than be prevented from coming together till they are twenty-one. It is in this light I look upon the bill; and it is upon this ground, my Lords, that I support it.

But now, my Lords, I have said this, I know I am calling down the aristocratic indignation of some in this House upon me: but this, my Lords, is by no means any matter of dismay to me. As a rule of legislation it is laid down, "that there are two interests; the interest of the whole, and the interest of the particular: that the interest of the former is great and noble, but that the interest of the latter is mean and scandalous." It is by this legislative rule that my legislative conduct will, I trust, ever be guided. It is by this rule that it is guided upon the present occasion, and perhaps there is no occasion that can occur which more peremptorily calls for the exercise of this rule than the present. The act which this bill means to modify, the Marriage Act, as it is called, was (as my Lords the Bishops know) like Doctor Graham's celestial bed, made for the few, and not for the many; for us, my Lords, and not for the benefit of the nation; and therefore, as a legislator, wherever I met with this principle, although numbered among the few myself, my preference will always be given to the many; for the interest of the whole is great and noble, whilst the interest of the particular is mean and scandalous. And now, my Lords, with respect to the doctrine upon the

the act itself, to which this bill alludes, although of no very long date, its demerits have been so often discussed, as well on its own account, as on the account of its ill-begotten child the Royal Marriage Act, and are so pointedly marked out by your Lordships protests on the journals of the House, as renders any observations of mine now, and to this end, useless and unnecessary. That the act is contrary to the laws of nature, that it is contrary to religion, that it is contrary to the policy of all governments whatsoever, are such self-evident propositions as require no argument to prove them. To say, that when the fruit is ripe it shall not drop, is vainly to kick against the pricks. Nature will be obeyed, and not even a Spanish padlock can counteract her dictates. *Naturam expellas furca tamen usque recurret.* That it is contrary to religion, I appeal to the right reverend Prelates upon the bench, and insomuch can have no doubt of their giving their support to this bill. St. Paul tells us, "it is better to marry than to burn." If therefore a woman, by the laws of nature, burn at sixteen years of age, and an act of Parliament says, she shall not marry till she is twenty-one, what is the consequence? She either breaks a commandment, and sins; or perhaps by waiting burns out the oil of her lamp, and so dies without fulfilling the end of her creation. Under these circumstances then it is not impossible not to suppose, but that the right reverend prelates will lend their assistance to a bill, which is intended, in conformity with their duty, "*Concubitu prohibere vago,*" instead of supporting an act which manifestly encourages and promotes fornication and whoredom in the state.

That this act is contrary to the policy of all governments whatsoever, the proofs are endless and without number. The wealth and strength of a nation are its numbers; to obtain those numbers is not by loose and intemperate pleasures, but by the chaste and more rational medium of the marriage bed; to which the sexes are to be invited by privileges and exemptions, and not deterred by the disabilities and penalties of laws. That it is contrary to the policy of this country in particular is, above all others, true. A country, where freedom is said to reside, where population is to supply the want of territory, and where trade and commerce, the creators of the other two, form the only basis of its political greatness. Where, instead of an act like this, an act, compelling Englishmen to fly to Scotland, to comply with the laws of nature, (the only necessity that could induce an

Englishman

Engliſhman to fly to Scotland) ſhould expect to find their ſureſt refuge, and their beſt ſupport. Where, inſtead of prohibitions, encouragements to population and incitements to marriage, ſhould be the firſt objects of its laws; where, inſtead of ſuch an act as this is, one ſhould rather hope to ſee a law, which whilſt it impoſes the payment of triple taxes upon the man who beyond a certain age (ſuppoſe the age of thirty) lives a ſingle and unmarried life, to the man who is married, holds out the Roman privilege, the Roman right, the *jus trium liberorum*, in exemption from the payment of all taxes whatever. But to do this, my Lords, we muſt have what is difficult to procure, we muſt have a ſtateſman and a politician, and not as the Earl of Chatham once ſaid of his brother-in-law, Mr. Grenville, "A thumper of law-books, and a retailer of words." We muſt have an Earl of Chatham, if an Earl of Chatham can be found; and if not, we muſt take the man who has wiſdom enough to let the example of that great man be the object of his imitation. But, my Lords, I am running into obſervations, which I have already ſaid, were unneceſſary for me to make; and therefore I will only trouble your Lordſhips with a ſingle remark more, that is rather incidental to this ſubject from what I have laſt ſaid, than a topic of argument in it, and it is this: That impolitic and unwiſe as this act is, I mean the Marriage Act, (for this, I preſume, no one will venture to deny, eſpecially after the recent inſtances that have been afforded your Lordſhips of its want both of policy and wiſdom) it is yet the legitimate offspring of the firſt and greateſt lawyer this kingdom ever had to boaſt of; a reflection, my Lords, that would be diſgraceful to human nature, if another reflection, ſupported not only by the authority of the Earl of Chatham but by reaſon and experience, did not confirm the truth of it, and which is this: That of all deſcriptions of men, (except the clergy, who think of nothing but of their own power,) the lawyers (I mean mere lawyers by profeſſion) are the leaſt qualified for ſtateſmen and politicians. Your Lordſhips will think this a bold aſſertion; but it is not therefore leſs founded on reaſon and experience: upon reaſon, for this ariſes out of the very nature of their profeſſion; a profeſſion that forces their abilities, however great, into all the little, low, narrow, confined perſonalities of perſons and minutiæ of things; and in order to manage this with dexterity and ſucceſs, into that poor left-handed wiſdom called artifice and cunning, into

those quirks and quibbles, which, instead of expanding, lessen and contract the human mind. Upon experience, for in the biographical history of all our eminent lawyers (except Bacon and Somers) shew me a lawyer that deserves the name of a statesman; upon experience, for look to the present reign; a reign which, for the whole of it, has the eminent misfortune of being under the guidance of an eminent lawyer: a lawyer who carried us across the Rubicon, who told us to draw our swords and throw away our scabbards; who bid us kill the Americans, or the Americans would kill us; who has made us believe that every common soldier in England, for the purposes of suppressing riots, is a justice of peace.

My Lords, upon the event of these counsels and upon the policy of these measures, let your Lordships experience determine. My Lords, I have done, except to add my resolution to support this bill; and to say, from the the counsel of such lawyers, if his majesty will not, may the Lord deliver us! One thing more it may be necessary for me to say, and that is, that I have no apology to make for what I have said. To speak the truth is the privilege of an Englishman; and to do so roundly and plainly is his first and best, and greatest glory!

Lord Chancellor. The *Lord Chancellor* observed, though their Lordships had not regularly gone into the order of the day, the noble Earl, who took the opportunity of addressing the House, spoke to the question just as if it had been under consideration; but, in his conception, the noble Lord had been premature in his observations, as they seemed much better calculated for a committee, than when the principle of the bill was to be debated on a second reading.

For his own part, he had long made up his mind, but if he had not, the very late period the bill was introduced into that House, would serve him instead of every objection. Indeed the noble Lord himself disapproved of the bill in its present form, nor did he expect to hear a single noble Lord present say, that he could with propriety give his assent to the bill, destitute as it was of that degree of specification, accuracy, and precision, so necessary to bills of such extent and importance, and which of course, must embrace so great a variety of objects.

The noble Earl had suggested several objections against the Marriage-act, passed in the reign of the late king, of which the present bill was designed to be a partial repeal. He could

not

not say that he was prepared to enter into the subject at large, nor would it be then at all proper.

He assured their Lordships, that he heard with great indifference the general censure thrown upon the profession of the law and its professors, nor did the memory of the great lawyer, whose character had been particularly pointed at, require him to stand forth as an advocate to defend it. That great lawyer's character was such as to bid defiance to the attacks of faction, and rose superior to the envy or ill-will of all those who would depreciate it.

Though it might be irregular, he could not help observing, as he was up, that it was very extraordinary indeed, that the present bill, loose and inaccurate as it was, was totally destitute of any plan or principal for effecting the obvious or declared purposes for which it was framed; for it did not even pretend to attempt to remedy any one of the grievances complained of as arising from the marriage act of the late king; on the contrary, the bill proceeded upon a system perfectly new and unprecedented, and in his opinion, would leave the law worse than it found it, in the apprehension of those, who entertained the most unfavourable sentiments of the act as it now stood.

On the whole, he thought it would be extremely improper for the House, to proceed farther in a bill of such infinite importance at so late a period of the session.

A motion was then made, that said bill be read a second time, and on the question put, the Earl of *Abingdon* said "the contents have it," but observing, that almost every Lord present was preparing to go below the bar, his Lordship declined, a division.—The House adjourned to the next day.

Earl of *Abingdon*.

July 13.

The other orders of the day being disposed of, it was moved, that the House do resolve itself into a Committee on the Insolvent Debtor's Bill, which called up Earl *Poulett* who addressed the House, to the following effect:

Earl *Poulet*.

My Lords,

Tho' I am not averse to bills of this kind passing at proper times and under proper regulations, yet I have strong objections to such frequent repetitions of them; because they have a tendency to sap and destroy all trust, faith, and confidence between man and man, without which, it is impossible to carry trade to that extent which in a great commercial country, like this, is to be wished. Credit has hitherto run from

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six to eighteen months, according to different commodities, in which respective individuals generally traffic, and a vast advantage and encouragement it is to commerce to have such long credit, but if bills of this sort recur so frequently, where is the manufacturer, who will in future give that long credit, when before the expiration of the time an insolvent bill is almost sure to pass, which absolves the person so intrusted from the payment of all his debts? Trade suffers a paralitic stroke by such bills: my Lords, the bill in its preamble pleads humanity and compassion to induce your Lordships to pass it, words calculated to operate on weak minds, and to assist the sinister purposes of hypocritical ones; but the consequences, give me leave to observe, are totally repugnant to justice, to the law of the land, and all sound policy. [illegible] laws, my Lords, lose their permanency, the people [illegible]rees soon lose their honesty, which earlier or later must [illegible]ertain ruin on any country. Nine parts in ten I will [illegible]e to affirm of those now incarcerated in the several jails [illegible]oughout the kingdom have been brought there by their own idleness, by their own dissipation, by gambling and a total corruption of morals, many of them swindlers, many who have fraudulently got themselves put into jail merely to cheat their creditors, by taking advantage of this act. Ought not then persons under this description to suffer a reasonable time of imprisonment at least, not only as a punishment for the injury they have done to individuals, but to deter others following the like examples. Away then with the cant terms of humanity and compassion, as if as much and more compassion was not due to the honest creditor who earns his bread by the callous hand of labour, as to the profligate debtor who has robbed him of his all by imposing under false pretences on his too easy credulity. The money which the honest creditor has thus lost, would in his hands, probably, if he had not been deluded of it, have been employed to the advantage of the public, whereas it has been squandered by the other to the injury and disgrace of society, and what is still worse and much to be lamented, the unhappy creditor and his whole family in consequence, shall perhaps be forced into that jail from which his profligate creditor is just freed by this bill. But farther, this bill is the greatest discouragement to trade and industry that is possible; for what inducement has any person to be industrious but to make a saving for himself and family? But where is that inducement if he can find no security for the fruits of his labour? Add to this that it is

multiplying

multiplying oaths; it is laying people under the strongest temptations to perjure themselves: It is in some degree making yourselves accessary to fraud. Your Lordships had much better pass a short bill, and decree at once, that no person in future shall be liable to the payment of his debts. Every body will then know what he has to depend upon; what he has to trust to.. What has any person not over honest now to do to grow rich, but to extend his credit to the utmost, vesting whatever sum he can borrow in Bank bills, or East-India bonds, and at a proper time, by a friendly suit, get himself put into jail, out of which a bill of this kind shortly delivers him, when he may safely laugh at his creditors, having in his own hands the only means of being detected in his fraud? In a word, the duration of confinement is at present so short that people do not regard it, and are become so abandoned in principle, that they make a trade of taking every advantage of the credulous Then we complain of the jails being so crouded that there is no room to contain the prisoners; to what is this owing, but to these bills of insolvency, which every three years they are taught to expect, and are hardy enough a little before the time to solicit imprisonment of some friend, with a view of leaving their creditors in the lurch? The numbers now in prison, I understand, is the chief reason of this bill being set on foot if so, I most heartily commiserate the pitiful state of this country, which has not more spirit than to suffer itself to be overborne by the very dregs, the scum of mankind. If it was possible to distinguish such as are or may be truly objects of compassion, who by a train of real and unavoidable misfortunes have lost their liberty, and such who by a bad course of life, and with bad views, have thrown and brought themselves into prison, one should gladly pass such a bill, but as that is impossible, the only thing which can be done in their favour is to reduce their state of confinement to as short a time as you can without injury to the public, and that, I apprehend, cannot be for a less time than three years; a term, which few debtors would probably chuse to undergo durance of, merely with a view of cheating their creditors. My Lords, bills of this kind formerly were not used to pass but in the beginning of a reign, or once, perhaps, in seven years. Lately they have been reduced to three years; and I doubt not but that in a little time they will be brought regularly into Parliament annually, like the indemnification-bill, when there will be no longer any credit left in the nation, However, as this bill has already made its progress through the other House, and expectations of its passing have been held out to the debtors, I shall not

oppose

oppose its going into a committee, in hopes it may receive some amendments, which may render it less liable to objections than it is at present.

The House accordingly resolved itself into a Committee, Lord Walsingham in the chair.

Lord Chancellor.

The *Lord Chancellor* observed, that the ground of the bill, if he understood the preamble, stated the reasons for passing such a bill in the usual and ordinary way, which he confessed appeared to him a little extraordinary, as there had been a bill of a similar nature, passed about eighteen months since. By the various laws in being, the creditor was assured of a security, for the property he parted with. He appealed therefore to their Lordships wisdom and justice, whether it would be consonant to either to take away that security from them? If the legislature had determined to repeal those temporary acts of insolvency at shorter or longer periods, it would make every debtor a freeman on the cession of his property, for the benefit of his creditors, and in order to guard such a law from fraud and imposition, to vest a power in the Judges, to determine how far the debtor was or was not intitled to the benefit of the law.

He had heard that there were strong motives for passing the present bill, on which the bill was silent.—What he alluded to was the riots, which happened the preceding year, by which means an infinite number of persons, of almost every description of the lower order had been let loose on the public.—For his part, he could not perceive any necessity, which arose from that circumstance; in his opinion, the present necessity, rather arose from the act hastily passed at the conclusion of that session, but least he should not be able to make himself sufficiently understood, he would advert to some of the circumstances which came before the courts of law, and if his memory should so far fail him, as that he should fall into any error or mistake, he trusted, he should be corrected by the two noble Lords who preside in the Court of King's Bench and Common Pleas, and were now present.

His Lordship then went into a history of the parliamentary proceedings in consequence of the riots, continuing them down to the present moment, and taking a particular view of the two bills that had been brought in respecting prisoners at large in Middlesex and Surrey, sheriffs, jailors, &c. by the attorney-general; the one at the end of the last sessions, the other at the beginning of this. The first of these bills, he stated, to be the sort of remedy that in the moment, immediately subsequent to the breaking of the prisons, presented

a law

itself to the minds of those under whose direction the bill was drawn. The novelty of the occasion, and the hurry, in which, from the nature of the necessity that called for such a law, the bill was obliged to be drawn, might be certainly taken as the reasons why an oversight should have crept into the bill; the oversight he alluded to, was the enacting, that not only all persons who were in actual custody, at the time of the breaking of the prisons, should, upon surrendering to the marshal or warden of the two great prisons, in which respectively they might have been held, be deemed, to be as if they were prisoners, but also that all debtors who should afterwards be arrested, should, upon surrender of bail, be granted a certificate, which should exempt them, and save them harmless not only from their creditors, up to the moment of their being surrendered, but also from all the creditors they might afterwards run in debt with. It was that latitude for fraud and villainy that he considered as the only ground, upon which it could be pretended even that the present bill was necessary. Nor was the oversight confined solely to the first bill, it was to be found also in the second, whence every man, fraudulent enough to wish to take advantage of the opportunity afforded by the bill, was invited to practice fraud, cheat the honest trader, and swell the number of prisoners upon the books of the King's Bench and Fleet prisons to the enormous size which it had already attained. Had a clause, enacting that all those persons who were not in custody at the time of the breaking of the prisons, but who were arrested since, should be put into the real situation of a prisoner, been liable to be served with declarations, the actions against them rendered *supersedeable* under certain circumstances, every part of the regular process that went on against prisoners, when in custody, to go against them, and that they should be liable also to arrests on new suits, in his mind all the mischiefs that had happened, would have have been avoided.

His Lordship said, in the second bill, (that brought in this sessions) there was an infirm clause, but a clause of considerable operation, which in some degree tended to correct the oversight he had complained of; and that was, the clause enacting that prisoners should not be moved from the country by Habeas-corpus to London, to take the benefit of the former act. His Lordship here went into a discussion of the original intention of the issuing a writ of Habeas-corpus, and said all their Lordships, he doubted not, would be asto-

 nished

nished to find, (that notwithstanding the charm the mere words Habeas-corpus carried with them,) this writ, so far from being intended, as it was generally understood to be, (and as by fictitious process it was rendered) a benefit to the defendant, was designed to be an advantage and security to the plaintiff, who was by statute entitled to sue out a writ of Habeas-corpus, in order to bring up his debtor, when he endeavoured to avoid the issue of a process. At present such was the perversion of practice, that defendants procured a friend to become a fictitious plaintiff, in order to sue out the writ of Habeas-corpus, and to enable them to move themselves where they pleased.

After stating this very fully, his Lordship said, as the preamble held out none of those reasons for passing such a bill, to which he had alluded, he must speak to it as an ordinary temporary bill of insolvency, to which, and to all such, he was eagerly anxious to be understood as a professed enemy, excepting only in cases where the public might be prevented from losing the benefit of the labour of so large a number of persons, when it could be proved, that they were really unfortunate and honest, desiring to do what was right if they had it in their power, and anxious by the sweat of their brow, to do their creditors ample justice. To relieve such persons under certain regulations and restrictions, he should not object; but to temporary acts of insolvency in general he always should object, because he was persuaded they were of the most pernicious consequence, and tended rather to encourage fraud than relieve distress. Instead of the present bill being applicable to the case which was rumoured to be the cause of the bill, and which he understood was the form of the bill when first brought into the other House, it was, as it now stood, an ordinary bill of insolvency, and that of the largest sort of any to be found upon the statute books. But it was said without doo s, the extreme number of the prisoners made it necessary. Would their Lordships, owning such a necessity, pass a temporary bill of insolvency? If they did, the inevitable consequence would be, that the evil now attempted to be cured, would grow into existence again almost immediately after the present was passed; for if the legislature once acknowledged that a large number of prisoners was a sufficient ground of necessity to render an act of insolvency expedient, new prisoners would croud into the prisons the instant the present bill was passed, in order to create a necessity for their being white-washed, as was called.

But,

But there was, in fact and in truth, nothing tremendous in the number of 6000 prisoners.

Lord *Mansfield* said, the arguments that their Lordships had just heard were so founded in principles of strict justice and sound policy, that he was very far from rising with an intention to controvert them; the only way in which they could be answered was, by opposing to them a mistaken compassion, which had of late years got such possession of the minds of men, that the edge of the law was frequently turned against the honest and deserving creditor, in order to protect and advantage the fraudulent debtor. With regard to the general reasoning of the learned lord respecting temporary bills of Insolvency, it must be admitted to be perfectly just and undeniably true; the mischiefs resulting from them were justly encreasing, and the impolicy as well as the injustice of passing such bills at short intervals was so apparent, that it was wonderful the bulk of mankind had so long shut their eyes to it. In respect to all the noble and learned Lord had said, by way of general reasoning against such bills, his opinion exactly coincided; it had ever led that way, but the torrent was against it, and it was impossible for those, whose minds were under the bias, that he scrupled not to confess his had been, to do more than reserve their sentiments to themselves, and be silent. That the compassion, upon which the friends of such bills as the present had proceeded, was founded in error, was easy to be ascertained by an examination of its fruits. Every act of insolvency, and the variety of bankrupt laws now in existence had proceeded from that mistaken compassion; and it was notorious that there was not a single statute out of all those to which he had referred, that had not been grossly abused, and which, instead of producing good, had not produced a considerable deal of fraud and villainy. The bankrupt laws were, as every body knew, grossly perverted; and instead of serving as a security to the creditor, and a check upon the debtor, operated directly the contrary way. An act of bankruptcy was regarded by the legislature as a crime, and a commission was designed as a punishment; at present the reverse was the case; a commission made a bankrupt's fortune; it was what he wished for; and his friends assisted him in procuring it. Every day proved the increase of frauds under the bankrupt laws, because every day shewed that they were more and more abused; and yet, he knew not how the abuse could be

restricted, because he knew not how a rule could be laid down for separating the wheat from the chaff. So, in cases of insolvent bills, it was extremely difficult to draw them, so as to distinguish the honest and industrious debtors, from the idle and frudulent. With regard therefore, to the general reasoning against bills of insolvency, he joined most heartily with the noble and learned Lord; but he trusted he should be able to shew, that although bills of insolvency were generally pernicious at present, sound policy dictated, that passing some bill, like the bill then under consideration, would be highly expedient. The noble and learned Lord was a little mistaken in supposing, that the interval between the time of passing the last bill of insolvency, and the bringing in of that before the committe, was only eighteen months, it was three years. A bill was intended last year, but the breaking of the prisons prevented it. The period therefore, between the time of bringing in the last temporary bill of insolvency, and the time of bringing in the present, was longer than any interval of late years between the bringing in of such bills.

When Michaelmas term came, the court of King's-bench found the list upon their Marshal's books enormous; they found also, that the prisons were not repaired nor ready to receive the prisoners. They were puzzled how to act; they did however what they could. They declared that all the debtors, who had fraudulently obtained the certificate, had become cheats to no purpose, for that a fraudulently obtained certificate would be of no avail; and the court had given the prisoners who were brought up from the country, the option of either going to New-prison, or back to the county jail whence they came. New-prison, his Lordship said, was a sufficiently harsh place of confinement in point of accommodation, and those of the country prisoners, who did not accept of that jail, were remanded to the county jail. He added, that when the bill lately passed, was prepared, they had procured the clause, enacting, that no more prisoners should be removed by *Habeas Corpus* to be inserted. That bill was undoubtedly a necessary measure, and he could not but think, that some such bill as the present was at this time expedient.

With so large a number of prisoners on the books, it would be impossible for the courts to open the prisons. Lessen the number, and begin the new custody in a new manner. With a view to this, the court of King's-bench had already made orders,

orders adapted to the purpose. They had in particular made an order, that the wives and children of prisoners should not go into the prisons to lodge; and that for this reason: when the families of poor debtors once got footing in the prisons, there was no getting them out. The prisons afforded them lodging; they found a means of deducing profit from their situation, and they lived better in jail than they ever had lived out of it. In order to prevent this, he had thought it right, when a debtor's action became supersedable, and he might obtain his liberty, to make him go out of prison by force; about eighty prisoners were thus forced out, and he did assure their Lordships, that in many cases, they complained that it was a grievous infringement of the liberty of the subject that they might not be allowed to continue in prison if they chose it. The Court had also ordered the act, forbidding the use of allowing spirituous liquors in prisons, in order to prevent the prisoners from getting intoxicated, to be strictly enforced. Under these new regulations, they hoped prisons would become less desirable places of habitation, and therefore it was designed, that the imprisonment should in future be more rigid; it was wished that the prisoners to go in might be as few as possible.

His Lordship in the course of his speech said, he had frequently met with a cruel debtor, who had used his creditor most hardly, but he had rarely ever known of a cruel creditor, unless upon very great provocation indeed. He also laid some stress on the insolvent bill's having passed the other House unanimously.

Several amendments were nevertheless introduced into the bill, and the Lord Chancellor, after waiting to insert those amendments in their proper place, which were as it was reported, the cause of one hundred and eighty omissions, additions, &c. the bill was ordered to be reported, and the House adjourned to Monday the 16th.

There was no further debate, and the King coming to the House the next day, Tuesday, July 17, was pleased to give the Royal Assent to such bills as were ready, and to give his directions to the Lord Chancellor, to prorogue both Houses of Parliament, agreeably to the accustomed forms, in such cases made and provided.

END OF THE FOURTH VOLUME.